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In The Supreme Court of The United States

70-119

OCTOBER TERM, 1970

NO. ~~1564~~

ROBERT LEE BLEVINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals
FOR THE NINTH CIRCUIT

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Confessions, the Prosecutor must be Told that he Cannot Use the Broad Spectrum Conspiracy Indictment to Bottom Jurisdiction Where it would otherwise not Exist or to Render Obviously Hearsay Statements, Otherwise Inadmissible, Permissible Proof. These issues are on the Appellate Dockets in Almost All, if not All, of the Circuits and Should be Disposed of. . .27

5. The Court of Appeals for the Ninth Circuit has so far Departed From the Accepted and Usual Course of Judicial Proceedings, or so Sanctioned Such a Departure by the Lower Court Insofar as extra-territorial Reach of Federal Criminal Law is Concerned as to Call for an Exercise of this Court's Power of Supervision. 33

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2. The Co-Conspirator Exception to the Hearsay Rule Should be Declared by this Court to be Violative of Amendment VI Because it Permits Evidence to be Introduced which is not Subject to Cross Examination and Thus Violative of Due Process Under Amendment V and Thus Involved an Important Question of Federal Law which has not, but Should be, Settled by this Court. 21

3. The Court of Appeals for the Ninth Circuit Permitted an Indictment to Stand Which Charged in One Count, Multiple Conspiracies Composed of Different Groups of People Which Were Concerned with Different Subject Matter Transactions Which, if True, Violated Different Statutes. This so Far Departed from the Accepted and Usual Rules of Judicial Proceedings or so Far Sanctioned such a Departure by a Lower Court as to Call for an Exercise of this Court's Power of Supervision. 22

4. The Courts of Appeals, not only in the Ninth Circuit in this Case, but in All Circuits in Conspiracy Cases have Allowed the Prosecution to Develop a Growing Habit of Using Conspiracy Indictments in Lieu of a Prosecution for the Substantive Offense Itself or in Addition to. Just as this Court Served Notice on the Policeman that he could not Bottom his Case on Illegally Obtained Evidence or Unlawfully Extracted

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PETITION FOR A WRIT OF CERTIORARI

to the United States Court of Appeals

FOR THE NINTH CIRCUIT

The petitioner, Robert Lee Blevins, respectfully prays for a writ of certiorari to issue to review the judgment rendered in this proceeding by the United States Court of Appeals for the Ninth Circuit rendered per curiam on February 5, 1971.

OPINION BELOW

The judgment of the United States Court of Appeals was entered per curiam on February 5, 1971, and is reproduced in the appendix hereto as Appendix I. The order denying the petition for rehearing entered on March 9, 1971, is reproduced as Appendix II.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on February 5, 1971. A petition for rehearing was timely filed. The petition for rehearing was denied on March 9, 1971.

This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Have this court's decisions in Bruton v. United States, Pointer v. Texas, and similar cases implicitly ruled that the co-conspirator exception to the hearsay rule, as construed and applied, is contrary to Amendment VI?

2. Is the co-conspirator exception to the hearsay rule, as construed and applied, per se violative of and a denial of due process of law as understood by Amendment V?

3. Can one criminal conspiracy count properly combine two distinct types of crimes which involve not only different elements of proof, but also different punishments? Can more than one conspiracy with different objects and persons be charged in one count, in view of Kotteakos v. United States?

4. Whether or not the substantive aspects of federal conspiracy law, which allow prospective and retrospective vicarious criminal liability, are constitutionally permissible under present decisions.

5. Can a United States District Court properly exercise criminal jurisdiction under 18 U. S. C. Section 2314--causing travel in interstate commerce in furtherance of a fraudulent scheme--where the purported victims are Canadian and Liechtenstein corporations and the alleged fraud, which involves bribery of Mexican officials, was perpetrated in Mexico by Mexican residents, merely because one of the alleged co-conspirators is of American Citizenship or the corporations are represented by or owned by American citizens or persons transitorily within the United States and involve travel through or communications between the United States and Mexico.

6. Can a United States District Court obtain criminal jurisdiction under either 18 U. S. C. Section 2314--causing travel in interstate commerce in furtherance of a fraudulent scheme--or 18 U. S. C. Section 1343--fraud by wire--by using 18 U. S. C. Section 371--conspiracy to commit an offense against the United States--where the scheme concerned would come to fruition in Mexico merely because one of the alleged co-conspirators was an American citizen and certain otherwise innocent overt acts such as giving the victims a ride from the airport in San Diego, California, to nearby Tijuana, Mexico where all incidental telephone calls are alleged to have been made by the Mexican co-conspirators either from Mexico or to Mexico?

7. In view of Erie R. R. Co. v. Tompkins, can a Federal Circuit Court evolve a rule of evidence which frees Federal District Court judges from an obligation imposed by state evidentiary rules in that district to instruct, sua sponte, that where the prosecution's case rests upon circumstantial evidence that such evidence must not only

be consistent with guilt but be inconsistent with any other reasonable hypothesis except that of guilt.

8. Whether or not an eighteen-month delay from arrest to trial denies per se the accused his constitutional right to a speedy trial.

9. Can a conviction under 18 U.S.C. Section 2314--causing travel in interstate commerce in furtherance of a fraudulent scheme--stand where it is clear that the travel was in foreign, as opposed to interstate commerce; involved a robbery by force, not a fraud; and took place after the petitioner had clearly withdrawn from the transactions concerned?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article III, Section 2:

> The judicial Power shall extend to all Cases, In Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. * * *
>
> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places

as the Congress may by Law have directed.

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

United States Code, Title 18, Section 371:

> If two or more persons conspire to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act

to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

United States Code, Title 18, Section 1343:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writing, signs, signals pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

United States Code, Title 18, Section 2314:

* * * Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; * * * Shall be fined not more than $10,000 or imprisoned not more than ten years, or both. ***

This section shall not apply to any

falsely made, forged, altered, counterfeited or spurious representation of an obligation or other security of the United States, or of an obligation, bond, certificate, security, treasury note, bill, promise to pay or bank note issued by any foreign government or by a bank or corporation of any foreign country.

STATEMENT OF THE CASE

1. Summary of the Proceedings.

On December 11, 1968, an indictment was filed in the United States District Court for the Southern District of California in cause number 4710 charging petitioner and 15 others with violation of Title 18 U.S.C. Section 371, 2314, and 1343. [C.T. Vol. I, p. 1][1]

Count I thereof charged 37 overt acts. [C.T. Vol. I, p. 2-8]

Count II charged petitioner and others caused and induced Martin Goldman and Henry Williams III to travel in interstate commerce from New York to San Diego County, California in furtherance of a fraudulent scheme to defraud them of money in excess of $5,000. [C.T. Vol. I, p. 8]

After various motions and proceedings in case number 4710, a superceding eight-count indictment was filed as number 5427. [C.T. Vol. II, p. 1]

In the superceding indictment, Orlo Emmons Christy and Conrad D. Kohler were not named and William J. Mason and George Heffernan were added as defendants.

The indictment in 5427 alleged a conspiracy in Count I to violate Title 18, U.S.C., Sec. 1343

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1. "C.T." refers to the Clerk Transcript of Trial Proceedings.

and 2314 with 17 overt acts, and a conspiracy in Count II to violate those same sections with 11 overt acts. Count IV alleged inducing interstate travel in furtherance of a scheme to defraud Martin Goldman and Henry A. Williams III, and Count VII alleged a violation of Title 18, U.S.C., Sec. 1343.

A motion for a Bill of Particulars was made [C.T. Vol. II, p. 16] and granted in part. [C.T. Vol. II, p. 189-190, item 17 and C.T. Vol. III, p. 201]

Petitioner made a motion for new trial. [C.T. Vol. III, p. 215] The motion was denied. [C.T. Vol. III, p. 227]

Jury trial was had before the Honorable James A. Von Der Heydt and a guilty verdict was returned as to Counts I and IV. [C.T. Vol. IV, p. 402]

Motions in arrest of judgment, judgment of acquittal, and for a new trial were made and denied. [C.T. Vol. IV, p. 405, 408, 410] These motions were each denied. [C.T. Vol. IV, p. 474 and R.T. Vol. V, p. 1030][2]

Notice of Appeal was duly filed. [C.T. Vol. IV, p. 480].

The judgment of conviction was affirmed by the United States Court of Appeals, per curiam on February 5, 1971, [Appendix I]. The petitioner filed a timely petition for rehearing, which was denied March 9, 1971 [Appendix II].

The petitioner is presently on bail.

2. Basis for Federal Jurisdiction in Court of the First Instance.

The United States District Court for the Southern District of California claimed federal jurisdiction pursuant to 18 U.S.C. Section 371,

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2. "R.T." refers to the Reporter's Transcript of Trial Proceedings.

18 U.S.C. Section 1343, and 18 U.S.C. Section 2314 because the alleged victims traveled through this District in order to get to Tijuana, Mexico, or made or received telephone calls incident to their travel to Mexico through this District.

3. The Factual Background.

(a) The Etablissement Delami Transaction.

Morris Jacobs resided in Encino, California. [Jacobs, R.T., P. 633, L. 22-23] He had world-wide connections regarding the buying and selling of platinum [Jacobs, R.T., P. 694, L. 12-16] and was aware that platinum could come from Russia. [Jacobs, R.T., P. 664, L. 3-9] He had been a jeweler for 15 years. [R.T. 651]

In February 1967, petitioner Blevins telephoned Mr. Jacobs in Hollywood, California and offered platinum for sale. [Jacobs, R.T., P. 634-635] Then a preliminary meeting occurred, also in Hollywood, with petitioner and Dan Daniels, an associate of Mr. Jacobs in which the quantity, price, and Russian origin of the platinum was discussed. [Jacobs, R.T. 635-636] On March 4, 1967, the same three proceeded to the office of Jacob's attorney, Mr. Coleman, of the firm of Flaxman, Coleman, and Rostoff. [Jacobs, R.T. 634-637] Mr. Coleman reduced the purchase agreement to writing (see Defendant's Exhibit "G" to which is attached the agreement) [R.T. 637] This is Appendix III at page 19a. The purchaser in the agreement was Etablissement Delami, a Liechtenstein Corporation for which Jacobs signed as agent [see the agreement and R.T., P. 655]. Apparently Mr. Jacobs, Mr. Daniels, and Mr. Nacos were the sole shareholders [see the testimony of Mr. Ford, Mr. Nacos's attorney at R.T., P. 745].

Besides the written agreement there was a discussion of permits and transportation of the platinum, and Norman Natividad and Vincent Varela

were mentioned in connection therewith; Mr. Jacobs had previously heard that Mr. Natividad could arrange for export permits and had discussed the sale of commodities with him in the past. [Jacobs, R. T. 638, 652] Varela was to transport the platinum from Mexico to Europe [Jacobs, R. T. 638-639] Petitioner indicated $80,000 would be needed to secure permits, insurance, transportation, and export permits and the buyers would have to pay it. [Jacobs, R. T. 638]

Thereafter petitioner and Jacobs proceeded to Mr. Natividad's home in Tijuana to discuss arrangements for the permits. [Jacobs, R. T. 639]

The agreement between Morris Jacobs and Vicente Varela was reduced to writing and introduced into evidence as Government's 33 and its translation as Government's 34.

Blevins and Dan Daniels witnessed the agreement which contemplated that Vicente Varela would "take all necessary actions be they official or unofficial to obtain the necessary documentation".

That agreement's item 3 read:

> "Mr. Morris Jacobs shall give to Mr. Vicente Varela the sum of $40,000.00 (FORTY THOUSANT AND NO/100) and Mr. Robert Blevins $35,000.00 (THIRTY FIVE THOUSAND AND NO/100) as an advance against costs and actions which Mr. Varela deem necessary to take. Mr. Varela shall be empowered to dispose of the total sum without having to account for what or whom he has made disposition. Mr. Jacobs shall agree to pay Mr. Varela the sum of $500,000.00 (FIVE HUNDRED THOUSAND AND NO/100) after the merchandise has been sold, sale of which shall be no later than 10 days after said merchandise is delivered to its final destination."

The record is barren of any demand by Jacobs having ever been made for the return of the money concerned.

Petitioner and Natividad did not know each other personally at that time, and discussion was had as to the time limit to get the money to Mr. Natividad, how it would be spent, security, etc. [Jacobs, R.T. 639-640] Mr. Jacobs had difficulty raising the initial funds but finally raised $20,000 and proceeded with petitioner and Mr. Ford (an attorney from San Francisco) to Mr. Natividad's home. [Jacobs, R.T. 640-643] This was about June 30, 1967. [Ford, R.T. 730] The $20,000 was paid to Mr. Natividad and Mr. Varela. [Jacobs, R.T. 643] It belonged to John Nacos. [R. T. 644]

Since Jacobs had been unable to raise the $80,000 necessary it was agreed that $75,000 would suffice and that Mr. Blevins would put in $35,000. [Jacobs, R.T. 644] A week later another $20,000 was paid ; it also belonged to Nacos, a client of Mr. Ford. [Jacobs, R.T. 645 and Ford R.T. 734, 735] Mr. Blevins at that time gave Mr. Varela his check for $35,000. [Ford, R.T. 741, 751, 752] Mr. Varela was going to arrange for the export documents and was to get the money in order to pay the people necessary. [Jacobs, R.T., P. 719, L. 16-25]

Before any of the money was paid Mr. Jacobs went to a Mexican warehouse with Mr. Blevins and saw what he thought were platinum bars as well as an assay report. [Jacobs, R.T., P. 661, 662, 668, 670] The bars were marked with the hammer and sickle. [Jacobs, R.T., P. 672] The warehouse was guarded by armed men. [Jacobs, R.T. P. 673] Jacobs described these events to Mr. Ford, Mr. Daniels, and Mr. Nacos. [Jacobs, R.T. 673] Jacobs told Mr. Nacos he had seen a hundred bars of platinum and that drillings were made from the bars. Jacobs told Mr. Ford that he had checked the whole deal out and seen

the platinum. [Jacobs, R.T. 696-697] Jacobs also told the FBI he had seen platinum bars wrapped in paper. [Jacobs, R. T. 684]

When the second $20,000 was paid, Mr. Ford brought a receipt and agreement in English to be signed by Mr. Varela and Etablissement Delami [see Defendant's Exhibit "M", Jacobs, R. T. 644, and Ford, R. T. 732-733] This is set forth in Appendix III at page 24a. Instead of the parties executing that document, Mr. Blevins drafted one in Spanish. [Government's Exhibits 33 and 34; Jacobs R. T., P. 644, L. 19-25; Ford, R. T. 732-733, 755] These are in the Appendix at pages 8a and 10a. Mr. Varela spoke only in Spanish. [Jacobs, R. T. 668] The permits were to be obtained within three days after the money was paid. [Jacobs, R. T. 644-645] About a week or ten days after payment Jacobs received a telephone call from Mr. Natividad that they had received the papers, everything was okay, and Jacobs should catch a plane to Guadalajara, Mexico. [Jacobs, R. T. 645-646]. Mr. Jacobs's wife was sick and he had his associate, Mr. Daniels, go instead. [Jacobs, R. T. 647] Mr. Daniels went to Guadalajara about July 16, 1967, and met Mr. Natividad in Guadalajara, went to a hotel, where they were arrested and put in jail; Mr. Blevins and Mr. Varela were in the next cell, [Daniels, R. T. 708-710] Mr. Natividad said he made a deal with the Federales and would pay $1,000 to get them out of jail. [Daniels, R. T. 709]

In August or September Jacobs received a telephone call from Blevins who said that the platinum had been confiscated by the Mexican Government and they were trying to get it released, but it would take a lot of money. [Jacobs, R. T. 647-648]

Arrangements were made for Jacobs and Daniels to meet with Blevins, Natividad, and Varela at Rosarito Beach Hotel to discuss the matter. [R. T. 648] At the meeting it was explained it would take about thirty days to get the platinum released and Varela asked for $3,000, which was not

paid. [R. T. 649]

On approximately August 2, 1967, Jacobs signed a document outside the bowling alley in Tijuana; the document was in Spanish and Blevins said it would help him get the platinum back. [Jacobs, R. T. 698-699] The signature on Defendant's Exhibit I appeared to be his (Jacobs's). [R. T. 691-692] Mr. Daniels was present and signed the same document. [Jacobs, R. T. 701] It was signed to get the platinum released from the Government. [Jacobs, R. T. 705] Mr. Daniels remembered signing the document outside the bowling alley, it was Exhibit I, and is in Appendix III as page 22a. Both he and Mr. Jacobs signed it in order to release Natividad and Varela so they could get the merchandise released. [Daniels, R. T. 710-713]

Mr. Jacobs never received any permits. [Jacobs, R. T. 645]

(b) The Mason-Tonopah-King Inc. Transaction.

William J. Mason, one of the co-defendants and an alleged co-conspirator in Count I, was a resident of Las Vegas, Nevada. [R. T. 547]

In the fall of 1967, having obtained the telephone number of Norman Natividad, Mason called Natividad from San Ysidro, California, and requested an appointment to discuss brokerage of metals. [R. T. 545, 546, 547, 548]

Mason went to Natividad's home and talked with him.

After a while, Natividad called petitioner on the telephone, and he later appeared at the Natividad home. [R. T. 548]

Petitioner represented that he was an agent for Eleonor De La Garza on the sale of platinum. There were 40,000 ounces available at $75 per ounce. [R. T. 550]

There was a blank form of contract passed around. [R. T. 549] That contract is Government

Exhibit 30 and is set forth in Appendix III at page 5a. Petitioner stated that he had been schooled in law and was a Mexican resident. [R. T. 549]

The platinum was allegedly stored in a warehouse in Mexico and came from Cuba. [R. T. 550, 551]

Lores was to buy or procure export permits and provide transportation and insurance and bond for the transportation of the platinum. [R. T. 551]

On July 2, 1968, Mason went to the Natividad home in Tijuana to negotiate a contract. It was a new contract. A Mr. Oliver, Lores, petitioner, and Natividad were present. The terms were agreed on and the meeting terminated on the basis of a written contract to be typed up between Tonopah-King, Inc., with Mason as the agent or buyer and Carpenter as the seller. [R. T. 551-553] Mason never saw petitioner after July 2, 1968. [R. T. 562] Petitioner had nothing to do with the third contract in November 1968. [R. T. 566]

On September 24, 1968, Petitioner was arrested on this charge by FBI Agent Terry Knowles. [R. T. 816]

On November 18, 1968, Mason and William J. Moore met Natividad, Lores, and one Rodriguez in Tijuana. Tonopah-King was to buy 40,000 ounces of platinum. Mason and Moore are the only two shareholders of Tonopah-King, Inc. At this time, Moore gave $120,000 to Natividad and Lores to obtain export permits for the platinum [R. T. 557, 567] to be taken to Curacao. [R. T. 571]

No permits ever were issued or given to Mason. [R. T. 571]

The defense objected to any testimony being introduced as to the events which took place after petitioner's arrest on September 24, 1968. The objection was overruled. [R. T. 554-555]

(c) The Hartley Bell Transaction.

Sometime between November 1, 1967, and

the latter part of December, 1967, Hartley Bell, a Canadian citizen and businessman, met petitioner Blevins at Norman Natividad's home in Tijuana Mexico. [R. T. 507-508] The platinum allegedly came from a little country off the edge of Mexico and was brought in by fishing boat. [R. T. 508]

Blevins was known to Bell by the name of Carpenter. [R. T. 49] Mexican custom was to have the mother's maiden name last. [R. T. 653] Blevins's mother's maiden name was Carpenter. [R. T. 859]

Blevins was an agent acting on behalf of Eleonor De La Garza. [R. T. 502] Blevins had a "partial" legal background [R. T. 508] and he knew where the platinum was located. He was to take Bell to it when the contract was finalized and delivery was possible. [R. T. 506]

Mr. Bell employed an attorney named Miner, from Chicago, upon whom he relied to handle the details insofar as the appropriate procedure was concerned for exporting platinum from Mexico. [R. T. 520-522]

Although Bell was a native and resident of Canada, during the time in question he was staying at the Half Moon Inn, San Diego. [R. T. 522] Bell had no prior experience in the platinum field, [R. T. 523], but his attorney, Miner, was very familiar with it. [R. T. 522] Miner was to arrange for Four Million Dollars worth of financing. [R. T. 527]

On January 15, 1968, Bell, Petitioner, Charles Teleford, and V. V. Lores met at Norman Natividad's home in Tijuana to discuss a contract between International Investments, Ltd., a Canadian corporation, and Eleonor De La Garza. Bell represented International Investments, Ltd., and petitioner represented Señora De La Garza and signed as her agent. They entered into a written contract to buy and sell Forty Thousand ounces of platinum. [R. T. 502, 503, 506]

That contract was admitted into evidence as Government's 1 and is set forth in Appendix III at

page 1a.

That contract was "subject to" completion of a separate contract between International Investments, Ltd., and V. V. Lores; and "not subject to United States laws". [R. T. 529, 535]

Lores was to transport the platinum to its destination in his Lear Jet airplane. [R. T. 506, 525]

Prior to his signing the contract, Bell and Attorney Miner had gone over the contract in Chicago and at Norman Natividad's house with a Mr. Coleman and a Mr. Marshall. Petitioner was not present. [R. T. 534, 536]

Paragraph four of the contract required the purchaser to "arrange for and pay for cartage of personal property . . . submit to seller all necessary permits or licenses required for export from Mexico . . . ."

Petitioner refused to ship any material unless export permits were secured. [R. T. 870-871] These permits were an express condition precedent.

On May 21, 1968, Mr. Bell engaged in a telephone conversation with Mr. Teleford and Mr. Natividad. As a result of the conversation, Bell went to the Bank of America in San Diego and withdrew $60,000 in cash. [R. T. 539] And the next day, he went to Tijuana with the money. [R. T. 508, 509, 512]

This money "came from" Thomas Lanner of Chicago; however, Bell secured this money by Canadian real property he put up as collateral. [R. T. 516]

The $60,000 was to "procure" the permits to export the platinum from Mexico to Williamstadt, Curacao, Dutch West Indies. [R. T. 512] Varela was to get this money. [R. T. 871] It was presumably to be used to bribe Mexican government officials.

A contract for delivery was signed on that date, May 22, 1968. [R. T. 513, Govt's. 1] It is

the same contract as the January 15, 1968, transaction but corrected by interlineation as to dates. Petitioner was not present when Bell signed the contract. [R. T. 890] Natividad kept it for petitioner's signature later and forwarded a copy to Bell later. [R. T. 891]

Petitioner gave a $60,000 check to Lores, payable to Lores, who in turn endorsed it over to Bell. [R. T. 518] Bell's deposit of this check was contrary to specific instructions written on the check. [C. T., Vol. II p. 169]

On May 29, 1968, Bell and Natividad went to Mexico City to pick up two bars of platinum. [R. T. 513, 514]

After dinner, on their way back to the Alameda Hotel, Bell and Natividad were stopped by three men who identified themselves as Federal Agents and taken to a penitentiary; they were placed in a cell and questioned. [R. T. 515]

Petitioner, Lores, and Gonzalez were in another cell. After about three hours Bell and petitioner were released, taken back to the Alameda Hotel and Bell arranged to go back to Los Angeles. [R. T. 515, 516]

Bell never delivered to petitioner any of the permits required for the platinum to leave Mexico. [R. T. 536]

No platinum was ever delivered to Bell nor was the $60,000 bribe money returned to him. [R. T. 513]

(d) The Williams-Goldman Transaction.

Henry A. Williams III was a resident of Paterson, New Jersey. [R. T. 572]

In April, 1968, Williams, Marty Goldman, Seymour Flax and Goldman's attorney, Singer, flew to Los Angeles to purchase platinum from a Mr. Robbins. [R. T. 572, 573, 585] When the Robbins deal fell through, they met Broox Hoyt who took them to Tijuana, Mexico, and introduced

them to Norman Natividad at his home. [R. T. 585, 573]

While in Tijuana, Natividad introduced them to Vince and petitioner. Goldman was an attorney. [R. T. 590].

Natividad lives in a very beautiful, modern home in the $150,000-$200,000 price range. [R. T. 573]

Petitioner, while in Mexico, offered to sell them 40,000 ounces of platinum which he stated came originally from Cuba as payment for Mexican goods and due to his connections within the Mexican Government, he had access to this platinum. [R. T. 575]

One Mr. Gray was to be the buyer of the platinum [R. T. 576].

Goldman said he'd pay $100,000 if two bars of platinum were put up as collateral. [R. T. 592]

Petitioner stated he could not have anything further to do with any deal concerning placing two bars of platinum up.

The agreement proposed by petitioner was not acceptable to Goldman's group. [R. T. 727] At this point, Natividad took over the negotiations.

Natividad went on to say this deal was not petitioner's deal but concerned a group different from petitioner's [R. T. 593].

On May 2, 1968, Williams went to Natividad's house in Tijuana where Natividad introduced him to a Mexican named Juan. They discussed a delivery spot for the platinum and the $100,000 and selected the Grant Hotel in San Diego. [R. T. 576, 580]

Williams met with Juan and Natividad twice in Tijuana. Appellant was not present on either occasion. [R. T. 599]

Juan was to have the platinum and Williams the $100,000. They would then go to the King's Motel and assay the platinum. Goldman and Flax would be at the motel. [R. T. 580-581]

The reason for the two platinum bar exchange was to raise expense money for the larger trans-

action. [R. T. 612] The money was to be used to obtain documents, presumably by bribing Mexican officials, and for transportation expenses to Switzerland. [R. T. 836]

Goldman gave Williams the $100,000 in three packets. Williams put the money in both his inside coat pockets and in one side pocket. Williams then met Juan in front of the Grant Hotel. It was about 9:30 or 10:00 at night. [R. T. 603] At this moment Williams testified that he noticed petitioner standing in front of a drugstore across the street in an old shirt and old pants. [R. T. 581-582] Petitioner had previously dressed in very expensive clothing. [R. T. 583]

Williams walked down to the car with Juan. Juan opened the trunk and said "here's the platinum. Put the $100,000 on top of the brief case." [R. T. 582] Juan ripped the packets open and verified that there was currency inside. He then put it in the back of the trunk. [R. T. 600]

After the trunk was closed, Juan drove around the block to the side of the Grant Hotel, and claimed to call Norman Natividad on the phone. [R. T. 582]

Williams became frightened of Juan, a large 250-pound man. He feared Juan would kill him. [R. T. 582, 608] He would not leave the car. [R. T. 582] Juan dwarfed Williams. [R. T. 828]

Juan said, "Come to the phone or there is no deal." Williams went to the phone. Some spanish speaking person was on the phone. Juan started back towards the car. Williams dropped the phone and followed. Juan unlocked the car, got in, told Williams to get away from the car, saying "I'm going to kill you." Juan sped away with the money in the trunk of his car as well as the platinum bars. [R. T. 582]

Williams was being covered by at least two cars who were to protect him. [R. T. 610] The driver of one of the cover cars watched Williams and Juan. The driver of the cover car, a private

detective, did not see petitioner. [R. T. 829-832]

Juan was never seen again nor was any platinum seen after that. [R. T. 582-583]

Williams falsely reported to Flax, Goldman, and Catalano that his throat was choked immediately after the money was stolen. [R. T. 598, 597] because he was afraid of them. He was afraid of being killed by both Natividad's group and Goldman's group for this loss.

REASONS WHY WRIT SHOULD BE GRANTED

1. IMPORTANT QUESTIONS OF FEDERAL CONSPIRACY LAW REFERRED-TO BUT NOT SETTLED BY DUTTON v. EVANS, 400 U.S. 74 (1970) EXIST IN THIS CASE AND SUCH ISSUE IS SIMILAR IN NATURE TO THE ONE RAISED IN BOSTIC v. UNITED STATES, No. 5250, CERT. GRANTED, 39 LW 3297.

Unlike the Georgia Conspiracy statute construed in Dutton v. Evans, 400 U.S. 74 (1970), this conspiracy was charged under 18 U.S.C. §371, and is a separate substantive criminal offense.

In the trial complained of here, evidence was permitted to be introduced under the co-conspirator exception to the hearsay rule as to conversations between alleged victims and unapprehended alien alleged co-conspirators. This is directly contrary to Pointer v. Texas, 380 U.S. 400 (1968); Douglas v. Alabama, 380 U.S. 415 (1965); and Bruton v. United States, 391 U.S. 123 (1968). But for certain evidence made admissible under the co-conspirator exception to the hearsay rule, petitioner could not have been convicted of the substantive offense set forth in Count IV.

Bostic v. United States, No. 5250, October Term, 1970, Cert. Granted, 39 LW 3297, and this case are similar in that the court of appeals refused to consider or discuss the applicable principles set

out in Bruton v. United States, 391 U.S. 123, (1968), which forbids the use of co-defendants's extrajudicial statements.

In allowing in this case the use of such statements of unapprehended, alien co-defendants, the Court of Appeals for the Ninth Circuit has decided a federal question in a way which conflicts with applicable decisions of this Court as understood by Rule 19.

2. THE CO-CONSPIRATOR EXCEPTION TO THE HEARSAY RULE SHOULD BE DECLARED BY THIS COURT TO BE VIOLATIVE OF AMENDMENT VI BECAUSE IT PERMITS EVIDENCE TO BE INTRODUCED WHICH IS NOT SUBJECT TO CROSS EXAMINATION AND THUS VIOLATIVE OF DUE PROCESS UNDER AMENDMENT V AND THUS INVOLVES AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT, BUT SHOULD BE, SETTLED BY THIS COURT.

The Common law crime of conspiracy, as developed in the English Court of Star Chamber, has been subject to much criticism. As long ato as 1921, Dean Sayre wrote in Criminal Conspiracy, 35 Harv. L. Rev. 393 at 427:

> "It is a doctrine as anomalous and provincial as it is unhappy in its results. It is utterly unknown to the Roman law; it is not found in modern Continental codes; few Continental lawyers ever heard of it. It is a fortunate circumstance that it is not encrusted so deep in our jurisprudence by past decisions of our courts that we are unable to slough it off altogether. It is a doctrine which has proved itself the evil genius of our law wherever it has touched it. May the time not be long delayed in coming when it will be nothing more than a shadow stalking through past cases, --

when the Hawkins doctrine at last will be conclusively laid to rest!"

Considering that the Court of Star Chamber even went so far as to hold criminal a combination to accuse one of an offense cognizable only in the spiritual courts, see Rex v. Timberley & Childe, 1 Sid 68, 1 Keb 203, 204 (1663). No wonder the conspiracy rule is the prosecutor's darling.

This Court, in view of the recent cases of Pointer v. Texas, Douglas v. Alabama, Roberts v. Russell, Barber v. Page, and California v. Green, should amplify and explain that Mr. Justice Jackson's concurring opinion in Krulewitch v. United States, 336, U.S. 440 at 445 (1949) does not permit this so-called exception in view of Amendment VI.

3. THE COURT OF APPEALS FOR THE NINTH CIRCUIT PERMITTED AN INDICTMENT TO STAND WHICH CHARGED IN ONE COUNT, MULTIPLE CONSPIRACIES COMPOSED OF DIFFERENT GROUPS OF PEOPLE WHICH WERE CONCERNED WITH DIFFERENT SUBJECT MATTER TRANSACTIONS WHICH, IF TRUE, VIOLATED DIFFERENT STATUTES. THIS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL RULES OF JUDICIAL PROCEEDINGS OR SO FAR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Count I of the indictment charged not one but six allegedly fraudulent transactions. Each with different parties. This was such a prejudicial joinder of separate alleged conspiracies as to require reversal of the conviction.

The actual evidence disclosed four separate distinct and unrelated transactions in which platinum was to be sold to American buyers.

1. The Tonopah-King, Inc., transaction.

The agents for the buyer were Mason and Moore. But this transaction took place after petitioner's arrest on this charge. It also included one Oliver, Rossi (Juan) and one Rodriguez who actually got the money concerned. This is the only appearance of Rodriguez.

2. The Etablissement Delami transaction in which Jacobs, Daniels, and Ford were involved as agents for the buyer. This money belonged to one Nacos.

3. The Williams-Goldman transaction. From the evidence, this involved a group different from petitioner's. In this case, after threatening to kill Williams, Juan took off with the money, which belonged to one Gray. This is the only case where force or threat of force appears.

4. The Harvey Bell-International Investments, Ltd., transaction, in which the money belonged to one Lanner from Chicago. This was the only transaction which involved Teleford.

The evidence is clear that Blevins had been arrested in September, 1968. This was two months before the Mason-Moore-Tonopah-King, Inc., transaction in November, 1968. He was never seen after July, 1968, by anyone from this group.

Under Sandez v. United States, 239 F. 2d 239, Blevins had been, under these facts, as a matter of law, removed from the conspiracy if there was one.

Sandez stated this rule for this circuit:

> "We think that the moment of any conspirator's arrest is decisive as to him, even if it should be maintained that the arrest of the first conspirator is not conclusive as to all. At that moment, the conspiracy has been thwarted, and presumably, no other overt act contributing to the conspiracy can possibly take place, at least so far as the arrested conspirator is concerned."

Thus, the Tonopah-King, Inc., evidence should not have been admitted and it was prejudicial error to let it in.

Conspiracies are generally conceived as either "wheel" or "chain" conspiracies.

The trial court mistakenly treated the evidence as tending to show a "chain" conspiracy when, if a conspiracy existed at all, it would have had to be a "wheel" conspiracy.

The classic "chain conspiracy" case is a narcotics distribution ring. The "chain" has as its ultimate purpose the placing of the forbidden commodity into the hands of the ultimate purchaser. The success of each link is wholly dependent upon the success of the entire chain.

An individual associating with a "chain" conspiracy knows it has a "scope" and for its success, it requires an organization wider than may be disclosed by his personal participation.

In a "circle" or "wheel" conspiracy, the success of any individual illegal transactions is independent of the success of any other. See United States v. Agueci, 310 F. 2d 817, 826-827. It requires a "hub", then "spokes", and finally a "rim" to make up this "wheel".

From the testimony in this case, the parties involved are quite different. Rossi or Juan appears only in the transaction which takes place after petitioner's withdrawal and the transaction involves a "different group".

Teleford participates in the Bell transaction, but not in the Etablissement Delami one. While Natividad, Lores and Varela could have been in the "hub" there was never proof of a "rim".

Therefore, there is clearly a prejudicial joinder of offenses in one indictment of multiple conspiracies contrary to Kotteakos v. United States, 328 U.S. 750. See also United States v. Varelli, 407 F. 2d 735.

It was clearly prejudicial because the trial court, under the conspiracy exception to the hear-

say rule allowed the Mason-Moore-Tonopah-King, Inc. transaction to come in as well as the testimony about the robbery of Williams by Juan.

As in Goss v. United States, 329 F. 2d 180, there is here "no drawing of all together in a single, overall, comprehensive plan". There was therefore, no "rim" to the "wheel".

Therefore, the lumping into one indictment of all these unrelated transactions was plain and prejudicial error and the conviction must be set aside under the Kotteakos rule.

Trial counsel objected at all times material to this Kotteakos violation so there can be no suggestion that petitioner waived his right to complain of this misjoinder. Lumping together allowed things like this to happen:

After Williams testified, in the presence of the jury, he appealed for FBI protection because he was afraid of both the Natividad group, in which petitioner was an alleged co-conspirator, and/or the Goldman group.

R. T. 596:

A: . . . but I fear both the people in California and the people in New York

* * *

R. T. 619:

MR. JOHNSON: Your honor, may Mr. Williams remain the courtroom for a few minutes.

* * *

R. T. 620:

MR. MITCHELL: Well, perhaps, your honor--let's have him wait in the hall. I don't know what will happen downstream.

MR. JOHNSON: Your honor, the sole reason that I asked, I don't want him to go out in the hall by himself.

A: And I don't want to.

MR. JOHNSON: And the FBI agent stepped out for a moment.

* * *

THE COURT: Mr. Williams, you may be sea-

ted right there in the chair, the one behind you there (indicating). Where is the other gentleman, the FBI agent?

* * *

This was highly inflammatory. Before the jury's very eyes, Williams implied petitioner or his friends might kill him for having testified.

This innuendo of potential violence was prejudicial. It went to the integrity of the trial itself and was a bold assertion of a fact not in evidence. Reversible error in and of itself. This is exactly like the reversible error complained of in Hall v. United States, 419 F. 2d 582 and this case should be reversed for this point alone.

Had the judge not allowed Williams to testify, and it was plain error to do so, [see Sandez v. United States, 239 F. 2d 239] this could have never occurred. This grand stand play to the jury was highly prejudicial error and the case should be reversed on this point alone.

One further vice insofar as this lumping of conspiracies is this:

18 U.S.C. Sec. 2314 and 18 U.S.C. Sec. 1343 reach different areas. 18 U.S.C., Sec. 2314 applies only to "interstate" travel while 18 U.S.C. Sec. 1343 reaches both "interstate" and "foreign" commerce.

This exposed the petitioner in count one to being convicted of conspiracy to violate 18 U.S.C. Sec. 1343 upon insufficient proof or only proof that a 18 U.S.C. Sec. 2314 violation occurred.

This is important because 18 U.S.C. 1343 is punishable by a fine of no more than $1,000 or imprisonment for not more than five years, or both, but 18 U.S.C. Sec. 2314 is punishable by a fine of not more than $10,000 or imprisonment of up to 10 years or both.

To lump such disparately punished offenses into one count seriously prejudiced petitioner.

Judge Fred Kunzel, during pretrial proceedings, was led to the conclusion that there might be

error by joining the conspiracy charges. [C. T. 22, L. 6-7]

Because of this lumping together of multiple conspiracies so much error was introduced into the trial that petitioner was denied a fair trial. This conviction should obviously be reversed and the case dismissed on Kotteakos alone.

4. THE COURTS OF APPEALS, NOT ONLY IN THE NINTH CIRCUIT IN THIS CASE, BUT IN ALL CIRCUITS IN CONSPIRACY CASES HAVE ALLOWED THE PROSECUTION TO DEVELOP A GROWING HABIT OF USING CONSPIRACY INDICTMENTS IN LIEU OF A PROSECUTION FOR THE SUBSTANTIVE OFFENSE ITSELF OR IN ADDITION TO. JUST AS THIS COURT SERVED NOTICE ON THE POLICEMAN THAT HE COULD NOT BOTTOM HIS CASE ON ILLEGALLY OBTAINED EVIDENCE OR UNLAWFULLY EXTRACTED CONFESSIONS, THE PROSECUTOR MUST BE TOLD THAT HE CANNOT USE THE BROAD SPECTRUM CONSPIRACY INDICTMENT TO BOTTOM JURISDICTION WHERE IT WOULD OTHERWISE NOT EXIST OR TO RENDER OBVIOUSLY HEARSAY STATEMENTS, OTHERWISE INADMISSIBLE, PERMISSIBLE PROOF. THESE ISSUES ARE ON THE APPELLATE DOCKETS IN ALMOST ALL, IF NOT ALL, OF THE CIRCUITS AND SHOULD BE DISPOSED OF.

The law of conspiracy, as construed and applied so deprives the criminally accused of a fair trial and makes him so vicariously liable for crimes committed by others that it violates due process of law.

This wholesale imputation of vicarious criminal liability to a person who allegedly joins a conspiracy denies a person due process of law.

Jerome Hall in General Principles of Criminal Law (2d Ed) page 63, equates non-retroactivity of penal sanction as a corollary of the principal

of legality.

The substantive law of conspiracy necessarily includes a "party dimension."

With regard to the concept of the "party dimension " element of the substantive law of conspiracy, 72 Harvard Law Review at 927 pointed out, "it is apparent in examining the "party dimension" that persons cannot agree if they are unaware of one anothers existence." 72 Harvard Law Review seemed to find no difficulty in conceiving of the substantive crime of conspiracy by making the "conspiracy" the "group of conspirators."

But 72 Harvard Law Review at 929 then went on to say that "If, for example, a person is liable for all the substantive offenses committed by his co-conspirators in furtherance of the conspiracy, a person joining a group should not be helf for offenses committed prior to his entry, for he was not a party to the crime of conspiracy which was committed before that time."

At note 48, this comment is found:

> "It is difficult to believe that any court would allow such a result, but the language of many courts indicates that they would."

See for example, the instruction approved in Levey v. United States, 92 F. 2d 688, 691 (9th Cir.), Cert. den. 303 U.S. 639 (1937) which is the same as the instruction complained of on appeal by Petitioner.

Since Levey relies on Van Riper, perhaps an inquiry into the genealogy of Van Riper v. United States 13 F. 2d 961 (CA 9, 1926) is in order considering the dissent in United States v. Calarco, 424 F. 2d 657.

Van Riper relies on People v. Mather, 4 Wend (N.Y.) 229. Mather in turn relies on Rex v. Hammond and Webb, 2 Esp. Cas. 719. [170 Eng. Rep. 508] as authority for the proposition that one who joins an existing conspiracy

becomes vicariously liable for all previous criminal acts.

But in Rex v. Hammond and Webb, "an indictment against defendants who were journeyman shoemakers, for a conspiracy to raise their wages" Lord Kenyon actually said:

> "If a general conspiracy exists, you may go into general evidence of its nature, and the conduct of its members, so as to implicate men who stand charged with acting upon the terms of it, years after those terms have been established, and who reside at a great distance from the place where the general plan is carried on: such as was done in the cases of the state trials in the year 1745."

Edward Jenks, principal and director of Legal Studies of the English Law Society, in his Short History of English Law, 2d Ed. Rev. at page 345 referred to this period of time as follows:

> " Again, the thick darkness of the Eighteenth Century, descended upon the criminal law."

A deeper inquiry into Van Riper's underpinnings show that Anonymous 6 Mod 43 [87 Eng. Rep. 805] is case number 57 which deals with a Justice of Peace not needing to sign Writs of Certiorari; number 58 explaining what constitutes a riot; number 59 no exception to a juror on a Writ of inquiry; number 60 relating to an indictment on 5 Elig. C. 4; and number 61 Queen v. Croose on contempt.

Apparently, the fountain head of all this loose dicta is Hawkins, Pleas of the Crown (1716). Sayre, Criminal Conspiracy, 35 Harvard Law Review 393 at 402-402 suggest that Hawkins is not only wrong but that a case often sought to support his views, Rex v. Journeyman Tailors, 8 Mod. 10 [88 Eng. Rep., 9] (1721) relies upon a fictitious case The Tubwomen v. The Brewers of London. See 3 Col. L. Rev. 447 (1903).

We must not lose sight of the fact that the

United States is involved in a world wide, competitive struggle with the Soviet system for the minds of the international community as to which is the better system to provide mankind with the good life. Can we face the legal world knowing that our conspiracy laws rest on such a thin reed?

Mr. Justice Jackson, in an address to the New York State Bar Association regarding his experiences at Nürnburg, LXX Rep. N. Y. State Bar Assn 146, at 150:

> "We have heard it said that a person who studies only one system of law learns no law at all. This overstatement emphasizes the truth that one who pursues only one system of law is in no position to appraise the value of that system in general and in not much better position to value its particular rules. I can think of no subject more instructive to those who make the law, as judges from time to time do, than what is called comparative law. Only after we see by what principles and procedures other civilized and progressive peoples solve their legal problems does our praise of our own have any real significance, and only then can our effort to improve our own law take full advantage of available experience of others.
>
> From the questions that I am often asked, I am sure that American ignorance about Russia's legal system equals any possible ignorance of the Russians about our own. These questions often indicate a conception of Russia as a great space with no law at all--a vast anarchy. Nothing is farther from the truth. The Russians have a long juristic tradition, and in their own way are sticklers for legitimacy and correctness. They have

had an elaborate codification of law since 1648 and a tradition of Roman law that goes back to Byzantium. . As a result of the Bolshevik revolution, Russian law received a more radical overhauling than has occurred in modern times with any other country. But the first Soviet codes were drafted after consulting the most advanced codes of Continental Europe. Basic differences in economic and political conceptions and conditions, of course, led to many modifications of earlier Russian and of contemporary Continental Law. But for its own purposes and conditions, the Soviet Union has a system of civil and criminal law, as elaborate and as mature as our own, with roots as deep in history, and I doubt if its application is any deeper in confusion."

* * *

"Another difference concerned the crimes of conspiracy. As you know, this is the great dragnet procedure of our law, We know, too, that it is a somewhat dangerous procedure. Lawyers of the Roman tradition do not understand the common law concept which makes it possible thus to hold defendants responsible for crimes committed by others. They do understand aiding and abetting. *** The task of proving the conspiracy was delegated to the American prosecution, but even at the trial we sometimes had difficulty convincing our associates that the sweep of the conspiracy charge could be so broad."

The dissent in United States v. Calarco, 424 F. 2d 657, (2d Cir. 1970) suggests:

"The present case may now seem at several removes from the context of

Bruton v. United States, 1968, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476, but underlying Bruton is the value put on the defendant's right to confront and to cross-examine his accuser. Riviello could not because Calarco was his accuser; he could not call Calarco to the witness stand, nor meet Calarco's out-of-court imputation with out himself testifying. Cf. Douglas v. Alabama, 1965, 380 U.S. 415, 418-419, 85 S. Ct. 1074, 13 L. Ed. 2d 934. And in the frame of reference in which Geaney fixes the matter, the aim and effect of the procedure are to dilute the reasonable doubt requirement--a due process exaction, Matter of Winship, 1970, 397 U.S. 358, 90 S. Ct. 1968, 28 L. Ed. 2d 368 at the point at which , in a large class of prosecutions, the evidence of the prosecution is frequently most suspect, the informer or accomplice testifying to what a silent co-defendant said the absent defendant had said. If the words had a place in the record because they functioned in executing the crime or forming the criminal plan, they were admissible. But does not basic fairness require that the jury be told at once that the declaration is not evidence that the absent defendant was a participant in the crime and will never become such evidence no matter what other evidence is brought in? The declaration as a verbal act may become, perhaps, the responsibility of the absent defendant as a proved participant in the offense, but in an evaluation of the proofs in the legal perspective, it can not contribute to a finding that he was a party to the corrupt program.

If there be truth in the idea of jury incompetency to winnow evidence in pur-

> suance of instructions (contrast United States v. Bless, supra, 422 F. 2d at pp. 213-214), the consequence would not be the admission of such evidence for all purposes upon the judge's impression that a preponderance of the evidence, if believed, would indicate that the absent defendant was associated in the venture, but the exclusion of the evidence for every purpose on the ground that its prejudicial effect as spurious evidence of participation outweighs its utility as evidence of a constitutive act. Mr. Justice Jackson's vivid portrayal of the pitfalls of conspiracy practice in the courts (Krulewitch v. United States, 1949, 336 U.S. 440, 453-455, 69 S. Ct. 716, 93 L. Ed. 790) surely argues for the due-process importance of precision in jury instructions. See as questioning the view that juries were less capable than judges of making the required analyses, Morgan, supra, 43 Harv. L. Rev. at 188, 191."

But in the final analysis, the substantive law of conspiracy, as construed and applied, makes a person vicariously liable for what he did not do, but for what someone else did when he wasn't even a part of the conspirary.

It also allows a person to be convicted under circumstances which do not allow him to confront and cross-examine his accusers.

This does not comport with contemporary ideals of a fair trial and thus denies due process of law and violates Amendment V.

The substantive law of conspiracy should be restricted to essentially an aiding and abetting idea. The writ should be granted so this Court can so order.

5. The Court of Appeals for the Ninth Cir-

cuit has so far departed from the accepted and usual course of judicial proceedings, or so sanctioned such a departure by the lower court insofar as extra-territorial reach of federal criminal law is concerned as to call for an exercise of this Court's power of supervision. This unwarranted extension of American criminal jurisdiction to encompass private acts done in Mexico by Mexicans to a Canadian and a Liechtenstein corporation reaches the question posed by Mr. Justice Holmes in the dissent in Hyde v. United States, 225 U.S. 347. The House of Lords in Board of Trade v. Owen, 1 All. Eng. Rep. 411 [1957] and Regina v. Brixton Prisoner Governor, ex parte Rush, 1 All Eng. Rep. 316 [1969] has, on similar facts, found that no extra territorial jurisdiction exists because criminal jurisdiction is local and no precedent could be found for the proposition that an agreement to do something outside the territorial jurisdiction, which would be criminal if done within it would be indictable as a conspiracy.

Mr. Justice Holmes, in American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909) at 355 found the proposition "startling" that an act done outside the United States could fall within the operative ambit of a federal statute.

Judge Learned Hand, in United States v. Aluminum Co. of America, 148 F. 2d 416 (2d Cir., 1945) at 443 stated:

> "We should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States."

The evidence reveals that Norman Natividad, Vincent Varela and Juan were Mexicans, lived in Mexico, and all transactions smacking of a fraudulent scheme took place in Mexico. Petitioner was a Mexican resident.

Mr. Justice Holmes's dissent in Hyde v. United States, 225 U.S. 347 seems to be on all fours with the facts of this case and would dictate reversal for lack of jurisdiction.

Mr. Justice Holmes said:

> "It would be an amazing extension of even the broadest form of fiction if it should be held that an otherwise innocent overt act done in one state drew to itself a conspiracy in another state to defraud people in the latter, even though the first state would punish a conspiracy to commit a fraud beyond its own boundaries. Of course, in the pr[redacted]case the conspiracy as well as the ove[redacted]ct was within the United States States, but the case that I have supposed of different jurisdictions is a perfect test of where the crime was committed. If a conspiracy exists wherever an overt act is done in aid of it, the act ought to give jurisdiction over conspirators in a foreign state, if later they should be caught in the place where the act was done.
>
> * * *
>
> It is one of the misfortunes of the law that ideas become encysted in phrases and thereafter for a long time cease to provoke further analysis. On the other hand, if overt acts had been regarded as founding jurisdiction, the petitioners could not have been discharged in Tinsley v. Treat, 205 U.S. 20, 51 L. Ed. 689, 27 Sup. Ct. Rep. 430, where overt acts of other conspirators within the jurisdiction were alleged and not denied. Although the point was not mentioned in the opinion, it was argued and was not overlooked. At least, in the absence of clear statutory words, I am of opinion that logic and the policy and

general intent of the Constitution agree in refusing to extend the fiction of constructive presence to a case like this."

The facts in this case do not involve frauds against the United States such as the perjured visa application cases like United States v. Pizzarusso, 388 F. 2d 545 (9th Cir.) cert. den. 366 U.S. 948 (1961).

In spite of reaching the same result on factually similar cases, there is a conflict between the second circuit and the ninth circuit as to why.

The Ninth Circuit bottomed jurisdiction in part, at least, upon an adverse effect resulting within the United States citing Strassheim v. Daily 221 U.S. 280 (1911) and United States v. Aluminum Co. of America, 148 F. 2d 416 (2d Cir., 1945) but those cases would tend to show petitioner's acts, which took place in Mexico, were not within the subject matter jurisdiction of the United States since the fraudulent scheme came into fruition in Mexico.

This case should be dismissed for lack of jurisdiction.

But more important, the facts indicate the money parted with by each victim was not for the purchase of the platinum concerned, but to be used to acquire the requisite export permits. How else but by bribery of Mexican officials?

There is not one word in the record that there was no platinum for sale. There is no suggestion ever made in the record that the platinum represented to be in Mexico was not there or it was something other than what Morris Jacobs believed that he saw.

In each instance, the money was to go to Varela to get the permits concerned. "Mr. Varela shall * * * take all necessary action be they official or unofficial to obtain the necessary documentation * * *. Mr. Varela shall be empowered to dispose of the total sum without haveing to account for what or whom he has made such dispos-

ition."

This curious wording can only suggest bribery.

While the general American rule is that a larceny by false pretenses conviction will stand where the fraudulent representation is made that the money parted with by the victim will be used for a bribe, see 95 ALR 1249 Anno: False pretenses--victim's illegal intent it is not universally true or at least was not always true in New York, Georgia, Oregon, or Wisconsin and no evidence is in the record that the American general rule obtains in Mexico--a civil law country. There can be no presumption that the American common law on the subject, see Cuba R. R. Co. v. Crosby, 222 U.S. 472 (1912) again an opinion by Mr. Justice Holmes.

Both the House of Lords in Board of Trade v. Owen [1957] 1 All Eng. Rep. 411 and Dealy v. United States, 152 U.S. 539 seem to bottom their conclusions, in part, on this statement by Mr. Justice Woods in United States v. Britton, 108 U.S. 199, 204 (1883):

> "'This offense does not consist of both the conspiracy and the acts done to effect the object of the conspiracy, but of the conspiracy alone. The provision of the statute, that there must be an act done to effect the object of the conspiracy merely affords a locus penitentiæ, so that before the act done either one or all of the parties may abandon their design, and thus avoid the penalty prescribed by the statute'.
>
> Hence, if the conspiracy was entered into within the limits of the United States and the jurisdiction of the court, the crime was then complete, and the subsequent overt act in persuance thereof may have been done anywhere."

It seems clear that federal courts have no jurisdiction over frauds which take place in Mexico even though they involve American citizens. The holding in the case of Yenkichi Ito vs. United States, 64 F. 2d 73 (9th Cir., 1933), upon which counsel relies for this proposition was specifically approved and cited in United States vs. Rodriquez, 182 F. Supp. 479 (1960), affirmed sub nom Rocha vs. United States, 288 F. 2d 545 (9th Cir.; 1961).

Rodriquez stated:

> "When the effect is felt by private persons within the State, penal sanctions rest on the "objective" or "subjective" territorial principal used in the Strassheim case."

But the reverse is true in this case. The effect, the fraud, is felt or consummated in Mexico. If Rodriquez and Rocha have any continuing vitality, the United States Courts have no jurisdiction. See Yenkichi Ito v. United States, 64 F. 2d 73 (9th Cir., 1933).

In both Hartzell v. United States, 72 F. 2d 569 and United States v. Steinberg, 62 F. 2d 77 referred to in note 12 of Rodriquez, the fraudulent act was consummated within the territorial United States; exactly the reverse of the facts here.

Therefore, for the same reasons the courts found federal jurisdiction in the cases referred-to above, on mirror, or reverse image facts, this court should find no jurisdiction.

No case anywhere permits evidence to be admitted after a person has left the conspiracy. And, Sandez v. United States, 239 F. 2d 239 would make Blevins, as a matter of law, leave the conspiracy when he was arrested. But the trial court allowed evidence to come in as to acts which took place after his arrest with absolutely no showing of any connection by Blevins with the transaction.

This was plain error. Lutwak v. United States, 344 U.S. 604; Krulewitch v. United States, 336 U.S. 440.

6. In California, where a specific intent is an essential element of the crime and proof of such intent rests entirely upon or substantially upon circumstantial evidence, the trial court must, on its own motion, give an instruction on circumstantial evidence. Not to do so is reversible error per se. The California rule on circumstantial evidence requires such circumstances to not only be consistent with guilt but irreconcilable with any other rational conclusion [Caljic 2.02] The Ninth Circuit has specifically disapproved of this instruction in Sablan v. Guam, 434 F. 2d 837 (1970). This Ninth Circuit Rule is in direct conflict with the applicable state rule and is in conflict with other circuits. Certiorari should be granted to resolve this issue in view of the proposed Federal Rules of Evidence and the doctrine of Erie R. R. v. Tompkins.

In the instant case, the government produced no evidence regarding the world platinum market; nor did it produce any evidence as to whether or not there were large quantities of platinum available in Mexico for sale if the requisite regulations were complied with.

There was no evidence as to Mexican export laws or regulations, nor was there any evidence as to whom or how these export controls were administered.

There was no evidence of the existence or non-existence of a Mexico-Cuba trade pattern involving platinum as a balance of trade medium.

Jacobs, an experienced platinum dealer, thought the bars which he saw in Mexico were platinum. He said they were marked with the hammer and sickle.

Common knowledge of world affairs leads us to the conclusion that Cuba, a communist country, could so mark precious metals with that symbol.

There was no evidence that Blevins was not an agent for Señora De La Garza, nor was there any evidence that Varela could not obtain the per-

mits required by the contracts signed by Blevins as an agent for Señora De La Garza by bribery. There was no evidence that such bribes were not made nor any evidence that Varela did not intend to offer bribes in order to get the permits that were express conditions precedent to delivery of the platinum concerned.

It was essential to the governments case that it prove, beyond a reasonable doubt that petitioner acted with the specific intent to execute or carry out the fraudulent scheme charged in the indictment. See Fineberg v. United States, 393 F. 2d 417 (9th Cir., 1968).

The government's case, in each transaction, boils down to this:

The victims go to Mexico, meet at Natividad's home and discuss platinum. Natividad calls petitioner on the telephone. He comes and offers to sell platinum on the express conditions precedent that export permits be obtained by the purchaser.

The purchasers in turn hand money to Varela, in Mexico, to bribe Mexican officials so they will issue the permits.

The net result is that, while in Mexico, all concerned get arrested and thrown into jail. No permits issue. No platinum can be exported. No money is returned.

The only variation from this theme is when Juan apparently went into business for himself and stole, not only the bribe money--which he took by force, clearly a robbery--but also the platinum bars.

Thus, it is clear that the existence of a fraudulent scheme had to be inferred from the factual patterns concerned in each transaction. The Modus Operandi was too similar to be a mere coincidence. Therefore, a fraudulent scheme must exist.

Therefore, the government's case clearly rests on circumstantial evidence as to both the

very existence of a scheme and petitioner's involvement with such scheme.

The California Supreme Court in People v. Yrigoyen, 45 Cal 2d 46, 286 P. 2d 1 (1955) ruled that as a matter of the substantive law of evidence, the trial court, on its own motion:

> "Should have given an instruction embodying the principle that to justify a conviction on circumstantial evidence, the facts and circumstances must not only be consistent with the theory of guilt, but must be inconsistent with any other rational conclusion."

It is abundantly clear that under California law, the trial court would have been required to grant the motion for judgment of acquittal made, but denied, after close of the prosecution's case.

The Fifth Circuit seems to be in accord with the California rule. See Ah Ming Cheng v. United States, 300 F. 2d 202 (5th Cir., 1962).

There simply was no evidence of either the existence of a fraudulent scheme, nor any evidence as to petitioner's involvement.

Thompson v. Louisville, 362 U.S. 199 (1959) held at 206:

> "Thus we find no evidence whatever in the record to support these convictions. Just as 'conviction upon a charge not made would be sheer denial of due process', so is it a violation of due process to convict and punish a man without evidence of his guilt."

There must be proof of the evidence of a conspiracy.

Kassin v. United States, 87 F. 2d 183, 184

(5th Cir.; 1937) ruled:

> "* * * Widesweeping and damaging as is a charge of conspiracy, difficult as it is for one caught in the net of such a charge to extricate himself from it when the government has any evidence tending to connect him with it, such a charge, no less than charges of substantive offenses requires proof * * *."

The Ninth Circuit, in Sablan v. Guam, 434 F. 2d 837 (9th Cir., 1970) and United States v. Nelson, 419 F. 2d 1237 (9th Cir., 1969) formulated the rule for this circuit that:

> "The proper test is not whether the evidence excludes every hypothesis except that of guilt but, rather whether the jurors could reasonably arrive at (their) conclusion."

The California Policy in regard to circumstantial evidence and how it is to be treated, is not merely form but substance.

> "Neither Congress nor the federal courts can fashion rules of decision which are not supported by a grant of federal law making authority in Article I, or elsewhere in the Constitution, and that in such areas state law must govern."
> 48 F.R.D. 39 at 71 (1970)

Whether this court agrees with the California rule or not the subject is sensitive, serious, and of considerable importance in view of the proposed Federal Rules of Evidence and the existing dogma of Erie R. R. Co. v. Tompkins, 304 U.S. 64 (1938) that there is no federal common law. That being so, how can federal courts have a dif-

ferent substantive rule of evidence than the state within which such court is located?

Certiorari should be granted to settle this issue, since this petitioner was convicted on evidence which would clearly be insufficient in a California state court.

7. The decision of the court of appeals, insofar as it refused to consider the question of petitioner's denial of his right to a speedy trial is in conflict with the decision of the Supreme Court of Alaska on remarkably similar facts and certiorari should be granted to resolve this apparent conflict since petitioner's argument to the Court of Appeals for the Ninth Circuit was based on and followed the Alaska Supreme Court's decision in Glascow v. State, 469 P. 2d 682 (Alaska, 1970).

Mr. Blevins was arrested in September, 1968. The initial indictment in case number 4710 was filed on December 11, 1968. Petitioner made extensive motions in that case. On March 12, 1969, a superceding indictment; number 5427, was filed charging, in essence, the same things charged in number 4710.

In spite of a written demand for trial [C. T. 215, 217] petitioner was not tried until February, 1970. There can be no hint or suggestion that petitioner waived his right to a speedy trial. Eighteen months elapsed from arrest to trial Fourteen months elapsed from indictment to trial. This case is exactly like Glascow v. State of Alaska, 469 P. 2d 682 (1970) insofar as time is concerned. In Glascow, 14 months were involved.

Obviously, whether or not a defendant is incarcerated is not dispositive of the issue of denial of a speedy trial: Glascow, op. cit. n. 11 at page 688.

The Alaska Supreme Court, relying upon Klopfer v. North Carolina, 386 U.S. 213 and Smith v. Hooey, 393 U.S. 374 found a 14-month delay unreasonable and reversed Glascow's judg-

ment of conviction with directions to dismiss the indictment.

Parenthetically, the government's delay in furnishing discovery until the eve of the trial flew in the face of Judge Kunzel's pretrial order. [C. T., Vol. II 186-191]

This delay was prejudicial and in violation of Brady v. Maryland, 373 U.S. 83.

For example, the check given to Hartley Bell had something written on it which supported the argument that Mr. Bell's attempt to cash it was contrary to written instructions not to do so or to do so only under certain conditions. That was evidence favorable to the accused but not timely furnished to the defense. [See R. T. 381]

> "Here we are, it is now five minutes of eleven in the morning set for trial *** I have yet to see the original of that check which I understand *** is with Mr. Bell *** our clients have been seriously prejudiced."

Delay again in giving access to certain FBI recordings. [R. T. 380]

MR. MITCHELL: . . . your honor, it is a flaunting of the order again.

* * *

THE COURT: Counsel, Mr. Johnson said that he wasn't going to use those tapes.

MR. MITCHELL: How can he comply with Brady, Your Honor. Even if he is not going to use them, aren't we entitled to see them?

This delay in furnishing discovery when coupled with the delay in bringing the case to trial seriously prejudiced petitioner's right to a quick, speedy, public, and fair trial.

The judgment should be reversed and the case dismissed.

8. There is no United States Supreme Court

decision construing 18 U.S.C. §2314(2), Travel in Interstate Commerce in furtherance of a Fraudulent Scheme. Because this paragraph is unique to that statute, which uses in every other paragraph the phrase "interstate or foreign commerce" confusion exists in this important question of federal law and the issue of whether or not that section also comprehends travel in "foreign commerce" should be settled by this Court. The proper construction of this statute should also be explained.

Since penal statutes should be construed strictly in favor of the accused and may not be extended to cases not covered by the words used; United States v. Resnick, 299 U.S. 207, it is clear that this section does not apply to Count IV since Count IV was travel in foreign commerce. This paragraph of 18 U.S.C. Sec. 2314 by its plain language only applies to interstate commerce.

In construing this statute, obviously its various paragraphs are in pari materia and must be construed together.

Applying expressio unius est exclusio alterius to this statute we are compelled to find an affirmative description of "interstate or foreign commerce" in each of the other paragraphs but only "interstate commerce" in the second paragraph. Therefore, it is clear that the statutory crime is restricted to travel in "interstate commerce" alone and does not comprehend travel in "foreign commerce".

Petitioner was convicted of Count IV of the indictment, the Goldman-Williams Transactions.

This is the transaction in which petitioner's proposal was not acceptable to the alleged victims and the one Natividad said involved a group different from petitioner's.

It is clear that Juan took the money from Williams by force and fear--clearly a robbery, not a fraud.

To allow this conviction to stand on these

facts and this evidence would deny due process of law as understood by Thompson v. Louisville, 366 U.S. 199 (1959), since it is clearly contrary to the evidence.

CONCLUSION

1. This petition for certiorari raises the question previously posed to this Court in Bostic v. United States, No. 5250, October Term, 1970, in which certiorari was granted to review "the free-wheeling Star Chamber Rules of Evidence", applicable to conspiracy cases. This petitioner has a copy of the petition in Bostic and has patterned his points accordingly. Therefore, certiorari should issue on at least that issue.

2. The remaining issues appear to be ripe for discussion by this Court and in view of the fact that earlier American cases relied on English cases and the most recent English cases cite American Supreme Court cases insofar as the extra-territorial reach of conspiracy cases is concerned, this Court should harmonize or explain the rules applicable.

Therefore, for the reason cited above, a writ of certiorari should issue to review the judgment below; or, the judgment should be summarily ordered reversed and dismissed on the Kotteakos issue alone.

Respectfully submitted,

Richard S. Henderson

RICHARD S. HENDERSON

(Appendices Follow)

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	
v.	No. 26,087
ROBERT LEE BLEVINS, Appellant.	

[February 5, 1971]

On Appeal from the United States District Court
for the
Southern District of California

Before: CHAMBERS, CARTER and WRIGHT, Circuit Judges.

PER CURIAM:

The judgment of conviction is affirmed. A swindle involving proposed sales of platinum was at the root of the counts on which appellant was convicted.

We find the evidence sufficient and other points raised without merit.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff and Appellee, vs. ROBERT LEE BLEVINS, Defendant and Appellant.	No. 26,087 ORDER

[March 9, 1971]

Before: CHAMBERS, CARTER and WRIGHT Circuit Judges.

The motion to augment the petition for rehearing is granted.

The petition for rehearing is denied.

Copy of
Ex. 1.

GOVERNMENT
EXHIBIT
1 adm.
5427 Cr

CONTRACT AGREEMENT

This agreement made and entered into between THE INTERNATIONAL INVESTMENTS, LTD. of EDMONTON, ALBERTA, CANADA, represented by HARTLEY J. BELL, acting for the THE INTERNATIONAL INVESTMENTS, LTD. as its agent, hereinafter referred to as PURCHASER, and SRA. ELEONOR DE LA GARZA as her agent, hereinafter referred to as SELLER, on this ~~11th day of January~~ 18th day of May RBC HJB, 1968, at TIJUANA, BAJA CALIFORNIA, MEXICO.

1. SELLER agrees to sell and PURCHASER agrees to purchase ~~THIRTY-FIVE-THOUSAND~~ (~~35~~ FORTY RBC HJB 40,000) troy ounces of PLATINUM at the price of ~~NINETY-DOLLARS~~ ($~~90.00~~) ONE HUNDRED RBC HJB 100.00 U.S. CURRENCY per troy ounce, the price to be based and computed on 1,000 fine pureness.

2. SELLER will deliver the above described personal property in fifty pound bars, troy weight, the approximate size measuring five inches by seven inches by one and one-half inch (5" x 7" x 1 1/2").

3. SELLER agrees to deliver the same to WILLIAMSTADT, CURACAO, DUTCH WEST INDIES, consigned to THE INTERNATIONAL INVESTMENTS, LTD. on or before the 1st day of ~~February~~ June RBC HJB 1968, subject to PURCHASER'S acknowledgement of and compliance with all paragraphs and their commitments contained in this CONTRACT AGREEMENT.

4. PURCHASER is to arrange for and pay for

cartage of personal property hereinabove described, submit to SELLER all necessary permits or licenses required for export from MEXICO, and pay for all insurance for said personal property. Subject to approval of the SELLER and after presentation of above described documents necessary for legal export from MEXICO, PURCHASER will direct SELLER as to the method to be used for the cartage of said personal property in delivery. Delivery shall be made to a bank depository of PURCHASER'S choice.

5. The cost of final assay for said PLATINUM will be borne by the PURCHASER and a copy of same will be provided to both parties.

6. The sum of money to be due and payable under this agreement shall be paid after the property hereinabove described has been assayed and upon certification of said assay at destination on or before the 15th day of ~~February~~ June, 1968, RBC HJB or fifteen (15) days after arrival in WILLIAMSTADT, CURACAO, WEST INDIES.

7. The final assay shall be binding on both parties for the purpose of determining the amount to be paid under this CONTRACT AGREEMENT.

8. Any monies which may be due under this agreement will be paid in CURRENCY OF THE UNITED STATES OF AMERICA.

9. SELLER acknowledges that the property above described is going to be resold by PURCHASER for a profit.

10. Whatever transaction ensuing from this CONTRACT AGREEMENT will be transacted by any BANK OF PURCHASER'S choice located in WILLIAMSTADT, CURACAO, WEST INDIES, and authorized to operate as a BANK by THE GOVERN-

MENT OF HOLLAND. The final assay of material upon which payment of material shall be computed, will be done by an assayer recommended by same BANK.

11. Upon presentation of the required export permits necessary to fulfill this transaction, SELLER hereby agrees to delivery to PURCHASER immediately forthwith two (2) bars of PLATINUM hereinabove described in paragraph 2., to be held in trust by the PURCHASER as and for security of delivery be SELLER to the destination agreed by SELLER and PURCHASER. Upon fulfillment of this CONTRACT AGREEMENT by both parties, PURCHASER hereby agrees to release the two (2) bars of PLATINUM to ROBERTO B. CARPENTER.

12. This CONTRACT AGREEMENT is subject to the completion of a separate CONTRACT between the PURCHASER and SR. V. V. LORES. SELLER agrees herewith that SR. V. V. LORES will be authorized to deliver personal property to destination.

13. Subject to the satisfactory completion of this transaction, THE INTERNATIONAL INVESTMENTS, LTD. will hereafter have at their option the rights of first refusal to purchase all PLATINUM presently held by SRA. ELEONOR DE LA GARZA, represented by her agent ROBERTO B. GARPENTER, at the determined price of ~~NINETY~~ ONE HUNDRED DOLLARS ~~($90.00)~~ ($100.00) RBC HJB per troy ounce based on 1,000 fine pureness.

14. This paragraph shall, in addition to being an agreement between the parties, constitute instructions of parties hereto as follows:

a. The BILL OF LADING shall be consigned to THE INTERNATIONAL INVESTMENTS, LTD. or their

b. The depositor of any funds to which the SELLER may be entitled, in the amount agreed upon by the SELLER as stated in paragraph 1. shall be directed by SR. V. V. LORES or his assignee, and by this CONTRACT AGREEMENT, SR. V. V. LORES is duly constituted to give such instructions, whether they be in writing or verbal.

Executed at TIJUANA, BAJA CALIFORNIA, MEXICO, this ~~15th day of January~~, ~~22nd day of April~~, 18th day of May, 1968, RBC HJB for the THE INTERNATIONAL INVESTMENTS, LTD.

by /s/ Hartley J. Bell
HARTLEY J. BELL, AGENT

The undersigned hereby acknowledges receipt of two (2) bars of PLATINUM, pursuant to paragraph 11. of this CONTRACT AGREEMENT.

Accepted by _____

As

As agent for SRA. ELEONOR DE LA GARZA, the principal SELLER, I accept accept and agree to all terms of this CONTRACT AGREEMENT.

by /s/ Roberto B. Carpenter
ROBERTO B. CARPENTER, AGENT

Witnessed thereof /s/ Charles J. Telford

Not subject to U.S. Laws

GOVERNMENT
EXHIBIT
30 adm
5427 CR

CONTRACT AGREEMENT

This agreement made and entered into between _____ represented by _____, acting for _____ as their agent, hereinafter called Purchaser, and Sra. Eleonor De La Garza, represented by Roberto B. Carpenter, acting for Sra. Eleonor De La Garza as her agent, hereinafter called Seller, on the ____ day of _____ 196_ at Tijuana, Baja California, Mexico.

1. Seller agrees to sell and Purchaser agrees to purchase _____ troy ounces of Platinum, at the price of Seventy-five dollars ($75.00) U.S. Currency per troy ounce, the price to based and computed on 1,000 fine pureness.

2. Seller agrees to deliver the same to _____ on or before the _____ day of _____ 196__.

3. Delivery shall be made to a bank or assayer, the same to be determined mutually between the parties. Subject to approval of the Seller, Purchaser will direct Seller as to the method to be used for the cartage of said personal property. Purchaser is to arrange and pay for cartage, any and all permits or licenses required for export from Mexico, and insurance for the Platinum.

4. The cost of assaying said Platinum will be borne by the Purchaser and a copy of same will be provided to both parties.

5. The sum of money to be due and payable under this agreement shall be paid after the property he-

reinabove described has been assayed and upon certification of said assay at destination.

6. The assay shall be binding on both parties for the purpose of determining the amount to be paid under this agreement.

7. Any monies which may be due under this agreement will be paid in currency of the United States of America.

8. Seller acknowledges that the property above described is going to be resold by the Purchaser for a profit.

9. Seller will deliver the above described personal property in fifty pound bars, troy weight, the approximate size being five inches by seven inches by one and one-half inch, (5" x 7" x 1 1/2").

10. Whatever transaction ensuing from this Contract Agreement will be transacted through the _____ Bank of _____.

11. Upon presentation of the required export permits necessary to fulfill this transaction, Seller hereby agrees to deliver to Purchaser immediately forthwith three bars of Platinum Hereinabove described, i.e. Para. 9, to be held in trust by the Purchaser as and for security of delivery by Seller to the destination agreed by Seller and Purchaser. Upon fulfillment of this Contract Agreement by both parties, Purchaser agrees to release the three bars of Platinum to Mr. Carpenter.

11a. This Contract Agreement is subject to the completion of a separate contract between the Purchaser and Mr. _____. Seller hereby agrees that the personal property hereinabove shall be insured by Lloyd's of London Insurance Co. in total value on its shipment from the Island

of Curacao, Dutch West Indies, to _____.

12. This paragraph shall, in addition to being an agreement between the parties, constitute instructions of parties hereto as follows:

A. The bill of lading shall be consigned to _____ or assignees.

B. The depositor of any funds to which the Seller may be entitled, in the amount agreed upon by the Seller as stated in paragraph 1. shall be directed by Roberto B. Carpenter or his assignees, and by this agreement Roberto B. Carpenter is duly constituted to give such instructions, whether they be in writing or verbal.

Executed at Tijuana, Baja California, Mexico this ____ of _____ 196___, for the _____

by_____
name, agent

The undersigned hereby acknowledges receipt of three (3) bars of Platinum pursuant to paragraph 11. of this Contract Agreement.

Accepted by_____

As agent for Sra. Eleonor De La Garza, the principal Seller; I accept and agree to all terms of this Contract Agreement.

by_____
Roberto B. Carpenter, agent

Witnessed thereof:_____

CONVENIO QUE CELEBRAN POR UNA PARTE EL SR. MORRIS JACOBS Y POR OTRA EL SR. VICENTE VARELA.

PARA QUE POR MEDIO DE ESTE SE PUEDA LLEVAR A CABO EL CONTRATO CELEBRADO EL DIA 4 de Mayo, 1967, entre los Srs. Robert Blevins y el Sr. Morris Jacobs, de acuerdo con las siguientes puntos:

1. El Sr. Morris Jacobs debera entregar una copia bevidamente traducida y ante notario de el contrato que firmo con el Sr. Robert Blevins, para que este conozca el contenido de dicho contrsto.

2. El Sr. Varela se dara por recibido y enterado por escrito de dicho contrato, y se comprometera a que despues de que le haya sido entregada la mercandia a que se refiere dicho contrato, la cual le sera entregada por el Sr. Blevins y el Sr. Jacobs, a revisar la calidad y a hacer las gestiones necesarias, ya sean oficiales o no oficiales para obtener la documentacion necesaria para el buen termino de dicho contrato.

3. El Sr. Morris Jacobs, entregara al Sr. Vicente Varela, la cantidad de $40,000.00 (CUARENTA MIL 00/100) y el Sr. Robert Blevins $35,000.00 (TREINTA Y CINCO MIL 00/100), como adelanto para gastos y gestiones que tenga que hacer el Sr. Varela, pudiendo el Sr. Varela, disponer de el total de la suma, sin tener que comprabar con quienes y por que la haya hecho, el Sr. Jacobs, acepta pagar al Sr. Varela la cantidad de 500,000.00 (Quientos Mil) al ser vendida la mercancia, la cual se llevara a cabo a mas tardar dentro de los diez dias siguientes de se entregada en su destino.

4. En caso de que por alguna causa el negocio no se llevara a cabo el Sr. Varela haria la devolu-

cion de los $75,000.00 que valla a recibir de el Sr. Jacobs,,cuando este asi se lo requiera.

5. Leido y llevado a traducir, el presente convenio tanto por el Sr. Jacobs, como por el Blevins, al idioma Ingles, y estrado todos de comun acuerdo, firman al calce ante los testigos correspondientes.

/s/ Morris Jacobs — /s/ Vicente Varela
y
Vicente Verala

TESTIGOS

/s/ Robert Blevins — /s/ Dan Daniel

GOVERNMENT
EXHIBIT
33 adm
5427 cr.

GOVERNMENT
EXHIBIT
34 adm
5427 Crim

No. 1362
Spanish-English

BERLITZ TRANSLATION SERVICE
A Division of the Berlitz Schools of Languages of America, Inc.
[EMBLEM]
26 O'Farrell Street
San Francisco, Cal. 94108

Tel. 415 YU 6-6257

AGREEMENT REACHED ON THE FIRST PART BY MR. MORRIS JACOBS AND ON THE SECOND PART BY MR. VICENTE VARELA,

In order that through this agreement a contract could be reached on the 4th. of May 1967, between Mr. Robert Blevins and Mr. Morris Jacobs according to the following items:

Item 1.) Mr. Morris Jacobs shall give a copy duly translated and notarized of the contract which he signed with Mr. Robert Blevins so that the said Mr. Blevins may know the contents of said contract.

Item 2.) Mr. Varela shall acknowledge in writing the receipt of said contract, and he shall be bound, after the receipt of the merchandise which is referred to in said contract, to inspect the quality of said merchandise which will be delivered by Mr. Blevins and Mr. Jacobs, and to take all necessary actions be they official or unofficial to obtain the necessary documentation for the beneficial termination of said contract.

Item 3.) Mr. Morris Jacobs shall give to Mr. Vicente Varela the sum of $40.000.00 (FORTY THOUSAND AND NO/100) and Mr. Robert Blevins

$35.000.00 (THIRTY-FIVE THOUSAND AND NO/100) as an advance against costs and actions which Mr. Varela deem necessary to take. Mr. Varela shall be empowered to dispose of the total sum without having to account for what or whom he has made disposition. Mr. Jacobs shall agree to pay Mr. Varela the sum of $500.000.00 (FIVE HUNDRED THOUSAND AND NO/100) after the merchandise has been sold, sale of which shall be no later than 10 days after said merchandise is delivered to its final destination.

Item 4.) In the event that said transaction may not take place, Mr. Varela shall make a return of the $75.000.00-which he shall receive from Mr. Jacobs-upon the demand of Mr. Jacobs.

Item 5.) This contract having been translated into English and having been read by both Mr. Jacobs and Mr. Blevins, and all parties being in common accord, sign and seal before the duly authorized witnesses.

(signature) (signature)
Morris Jacobs and Vicente Varela

WITNESSES

(signature) (signature)

EXHIBIT "B"

Every care is taken to insure the accuracy of all translations. However, The Berlitz Schools of Languages of America, Inc., its divisions, affiliates, agents and employees shall not be liable in respect of any claims of error or negligence in translation or typing.

I, Pierre Bordes, of the Berlitz Translation Service, hereby certify that, to the best of my knowledge, the foregoing is a correct translation of the attached document.
San Francisco, August 7, 1968

/s/ Pierre Bordes
Pierre Bordes

Complaint

DEFENDANT'S
EXHIBIT
G adm
NO. 5427 CR

JOHN J. FORD, III
TOBIN & TOBIN
One Jones Street
San Francisco, California
Telephone: 626-2600

IN THE

SUPERIOR COURT OF THE

STATE OF CALIFORNIA

IN AND FOR THE CITY AND

COUNTY OF SAN FRANCISCO

Criminal Action No. 586176

Filed December 7, 1967

JOHN C. NACOS and SHIRLEY M. JAHNSON,

Plaintiff,

vs.

ROBERT BLEVINS, VINCENT VARELA, NORMAN NATIVIDAD, MORRIS JACOBS, DAN DANIELS, DOE ONE to DOE FOUR,

Defendants.

COMPLAINT

COMPLAINT FOR CONSPIRACY TO DEFRAUD

Plaintiffs JOHN C. NACOS and SHIRLEY M. JAHNSON, allege:

1. Plaintiffs are now and at all times mentioned herein have been residents of the City and County of San Francisco, State of California.

2. Defendant ROBERT BLEVINS is now and at all times mentioned herein has been a resident of the City of National City, County of San Diego, State of California.

3. Defendants VINCENT VARELA and NORMAN NATIVIDAD are now and at all times mentioned herein have been residents of Tijuana, Republic of Mexico.

4. Defendants MORRIS JACOBS and DAN DANIELS are now and at all times mentioned herein have been residents of the City of Los Angeles, County of Los Angeles, State of California.

5. The true names of defendants DOE ONE to DOE FOUR are at this time unknown to plaintiff and therefore plaintiff prays for leave to amend this complaint when the true names are known.

6. On or about March 6, 1967, defendant ROBERT BLEVINS represented to defendant MORRIS JACOBS that the said ROBERT BLEVINS was the owner of between 55,000 to 60,000 fine troy ounces of platinum located in the Republic of Mexico.

7. On or about said date defendant ROBERT BLEVINS intending to deceive defendant MORRIS JACOBS and plaintiffs JOHN C. NACOS and SHIR-

LEY M. JAHNSON, and to induce the advance of sums of money based upon said fraudulent representation, entered into that certain letter agreement dated the 6th day of March, 1967, a copy of which is marked Exhibit "A", attached hereto and made a part hereof as though fully set forth herein. Thereafter and on the 4th day of May, 1967, defendant ROBERT BLEVINS and defendant VINCENT VARELA entered into a written agreement with MORRIS JACOBS and DAN DANIELS, a copy of which is attached hereto marked Exhibit "B", and made a part hereof as though fully set forth herein. Said contract falsely and fraudulently represented to plaintiffs as follows:

(1) Defendants ROBERT BLEVINS, VINCENT VARELA, NORMAN NATIVIDAD were the owners of between 55,000 and 60,000 fine troy ounces of platinum located in the Republic of Mexico, which required the advance of $40,000.00 in United States Currency for the purpose of insuring and transporting said platinum to Zurich, Switzerland, for refining, assay and sale.

(2) Said false and fraudulent representations were communicated to plaintiffs JOHN C. NACOS and SHIRLEY JAHNSON by defendants MORRIS JACOBS and DAN DANIELS.

8. Plaintiffs believed and relied on such representations and were thus induced to mortgage their real property standing in the name of defendant SHIRLEY M. JAHNSON and to advance the sum of $40,000.00 in United States currency to MORRIS JACOBS and DAN DANIELS for delivery to defendants ROBERT BLEVINS, VINCENT VAR-

ELA and NORMAN NATIVIDAD. On or about the 4th day of May, 1967, said $40,000.00 in United States currency was delivered by defendants MORRIS JACOBS and DAN DANIELS to defendants ROBERT BLEVINS, VINCENT VARELA and NORMAN NATIVIDAD at Tijuana, Mexico, at which time the written contract, Exhibit "B" attached hereto, was executed. Had it not been for plaintiffs' reliance on the representations of ROBERT BLEVINS, VINCENT VARELA, NORMAN NATIVIDAD, MORRIS JACOBS and DAN DANIELS, plaintiffs would not have advanced $40,000.00 in United States currency.

9. In truth and in fact, as defendants and each of them well know, said representations were false and fraudulent in that ROBERT BLEVINS, VINCENT VARELA, and NORMAN NATIVIDAD did not own or represent any owners of 55,000 to 60,000 fine troy ounces of platinum nor did said platinum ever in truth or in fact exist. Said false and fraudulent representations were made for the purpose of extracting the sum of $40,000.00 in United States currency from plaintiffs herein and for the purpose of defrauding plaintiffs of said sum of money.

10. By reason thereof plaintiffs have been damaged in the sum of $40,000.00 together with interest thereon from May 2, 1967, together with costs incurred for transportation and communications to discover said fraud in the amount of $5,000.00. Further, plaintiffs' real property pledged as security for a loan in the amount of $25,000.00 is in the process of foreclosure and unless said foreclosure is restrained, plaintiffs will be damaged by the loss of their equity interest in said real property in the amount of $60,000.00.

11. In making the representations herein set

forth defendants and each of them were guilty of oppression, fraud and malice, and by reason thereof plaintiffs are entitled to exemplary damages in the sums of $300,000.00.

WHEREFORE, plaintiffs pray, as follows:

1. Judgment against the defendants and each of them in the amount of $40,000.00 compensatory damages.

2. Judgment in the amount of $5,000.00 special damages for costs incurred for transportation and communication.

3. Judgment in the amount of $120,000.00 as and for exemplary and punitive damages as against defendants and each of them.

4. Judgment in the amount of $60,000.00 in the event of loss of the real property security, by foreclosure.

5. Judgment in the amount of $180,000.00 as and for exemplary and punitive damages by reason of the loss of the real property security by way of foreclosure.

6. Costs of suit incurred.

7. Such other and further relief as the court deems just and proper.

Dated: December 6, 1967.

TOBIN & TOBIN

By /s/ John J. Ford, III
John J. Ford, III
Attorney for Plaintiffs

/s/ John C. Nacos
John C. Nacos

/s/ Shirley M. Jahnson
Shirley M. Jahnson

We, the undersigned, say:

We are the plaintiffs named in the foregoing COMPLAINT FOR CONSPIRACY TO DEFRAUD. We have read the foregoing document and it is true of our own knowledge, except as to the matters therein stated on information and belief, and as to those matters, we believe it to be true.

We declare under penalty of perjury that the foregoing is true and correct.

Executed on December 6, 1967, at San Francisco, California.

/s/ John C. Nacos
John C. Nacos

/s/ Shirley M. Jahnson
Shirley M. Jahnson

LAW OFFICES
FLAXMAN AND COLEMAN
Tenth Floor Commercial Exchange Building
416 West Eighth Street
Los Angeles, California 90014
Bernard D. Flaxman
Edward S. Coleman
Edward I. Gorman
Marvin Levin
Howard L. Rosoff

Area Code 213
Telephone 624-7575

Please Refer To:

Martin S. Friedlander
William Blatt
Lee A. Garry
David H. Breier
Jack Katz

LETTER AGREEMENT

This agreement entered into between ETABLISSEMENT DELAMI, hereinafter called Purchaser, and ROBERT BLEVINS, hereinafter called Seller, on the 6th day of March, 1967, at Los Angeles, California.

1. Seller agrees to sell and purchaser hereby agrees to purchase between 55,000 and 60,000 fine troy ounces of platinum at a price of $63.00 per fine troy ounce.

2. Seller agrees to deliver the same at Zurich, Switzerland, on or before the 25th day of March, 1967.

3. Delivery shall be made to a bank or an assayer, the same to be determined by mutual agreement between the parties.

4. Purchaser will direct Seller as to the method to be used for the cartage of said personal

property, and Purchaser is to arrange and pay for the cartage, any and all permits or licenses required and insurance.

5. The cost of assaying the said platinum will be borne by the Purchaser.

6. The sums of money to be due and payable under this agreement shall be paid after the property hereinabove described has been assayed and upon certification of said assay.

7. The assay shall be binding on both parties for the purpose of determining the amount to be paid under this agreement.

8. Any monies which may be due under this agreement may be paid in either American dollars or any other currency equivalent to the American dollar at the time that payment is made.

9. Seller acknowledges that the property above described is going to be re-sold by Purchaser for a profit.

10. Seller shall deliver the above described personal property in approximately 50 pound bars in the approximate size of six inches by eight inches by one and one-half inches (6" x 8" x 1 1/2").

11. This paragraph shall, in addition to being an agreement between the parties, constitute instructions of the parties hereto as follows:

a. The Bill of Ladings shall be consigned to ETABLISSEMENT DELAMI.

b. The disposition of any funds to which the corporation may be entitled, over and above the amount to be paid to ROBERT BLEVINS, shall be directed by MORRIS JACOBS or DAN DANIELS,

and by this agreement, ETABLISSEMENT DELAMI hereby appoints irrevocably MORRIS JACOBS and DAN DANIELS as its duly constituted agent to give such instructions, whether they be in writing or verbal.

12. As to the amount to become due to ROBERT BLEVINS at the rate of $63.00 per fine troy ounce under this agreement, either ROBERT BLEVINS or his wife, JOAN BLEVINS, may instruct the Purchaser or MORRIS JACOBS or DAN DANIELS on behalf of the corporation, either verbally or in writing as to the disposition of said funds.

13. Whatever transactions may become necessary shall be by any bank in Switzerland authorized or chartered by Switzerland to operate as a bank.

ETABLISSEMENT DELAMI

By: /s/ Morris Jacobs
MORRIS JACOBS, Agent

/s/ Robert Blevins
ROBERT BLEVINS, Agent

EXHIBIT "A"

xxiv

DEFENDANT'S
EXHIBIT
I adm
NO. 5427 CR

AUGUST 2, 1967

Mr.

Vicente Varela ,

Dear Mr. Varela:

Because of the expiration of our contract with Mr. Robert Blevins without fulfillment of any clauses contained therein we wish to convey to all concerned that we are no longer interested in your services of conveying material specified in that contract.

This letter will serve to inform all concerned that all commitments made in relation to this matter are hereby cancelled.

Sincerely yours,

/s/ Morris Jacobs
Morris Jacobs Agent

/s/ Dan Daniels
Dan Daniels Agent

-----GABRIEL MORENO HENRIQUEZ, Notario -- Publico Titular de la Notaria Numero Dos, de esta Municipalidad, en ejercicio, actuando en el Pro -- tocolo del Notario Numero Cuatro de esta misma - Municipalidad, LICENCIADO MARIANO VELASCO AGUIRRE, por suplencia convencional, C E R T I F I C O :----------
----Que la presente copia fotostatica es fiel re--- produccion del documento original que tuve a la -- vista. -Hice el cotojo bajo acta numero 6,673 seis-

mil seiscientos setenta y tres, Volumen Numero --
Cincuenta y Tres, del Protocolo de esta Notaria---
con esta misma fecha, habiendo agregado un ejem-
plar del mismo al Apendice respectivo, bajo el----
mismo numero del Acta y con la Letra "E".------
-----Tijuana, Baja California, a trece de Noviembre de mil novecientos sesenta y siete.-DOY FE

/s/ Signature
LIC. GABRIEL MORENO
HENRIQUEZ.-

[SEAL]

[NOTARIAL STAMPS]

DEFENDANT'S
EXHIBIT
M adm
NO. 5427 CR

RECEIPT FOR MONEY ADVANCED,
AGREEMENT TO PERFORM SERVICES
OR REFUND MONEY

RECEIPT is hereby acknowledged for the sum of Forty Thousand Dollars ($40,000.00) in United States currency by VICENTE VARELA L. (First Party), in hand paid by ESTABLISSMENT DELAMI, a Liechtenstein corporation (Second Party).

In consideration of the payment of said Forty Thousand Dollars ($40,000) in United States currency, IT IS HEREBY AGREED as follows:

First Party agrees to perform the following acts relating to the shipment of certain goods from Mexico to Switzerland on behalf of Second Party:

(a) Obtain all necessary customs clearances;

(b) Obtain all necessary certificates of origin;

(c) Obtain adequate insurance coverage through Lloyds of London, from Panama City to Zurich, Switzerland, via KLM Airline;

(d) Obtain any and all additional documents required for transit of said goods from Mexico to Panama City;

(e) Provide transportation for said goods from Mexico to Panama City;

(f) Provide a copy of the assay report of said goods to Second Party.

In the event of First Party's failure to perform all acts as set forth above, First Party hereby agrees to pay Second Party the sum of Forty Thousand Dollars ($40,000.00) in United States currency. First Party authorizes Second Party to enter judgment for the sum of Forty Thousand Dollars ($40,000.00), plus reasonable attorney's fees, in the event of First Party's failure to perform and on demand from Second Party.

Second Party agrees to pay to First Party or his designated assignee, in consideration of First Party performing the acts as set forth herein, the sum of Five Hundred Thousand Dollars ($500,000.00) at Zurich, Switzerland, after assay and funding by buyer in Zurich, Switzerland.

Dated: _____, 1967.

_____
Vicente Varela L.

ESTABLISSMENT DELAMI, a Liechtenstein corporation,

By _____
Morris Jacobs, its Authorized Agent.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

November 1968 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

NORMAN NATIVIDAD,
ROBERT LEE BLEVINS,
MITCHELL P. CHRISTENSEN,
WILLIAM EBBIN KELLY, JR.,
CARROLL LANGFORD SNEED,
ANTHONY UMBERTO ROSSI,
VICENTE VARELA-LORES,
ELEONOR DE LA GARZA,
BROOX HOYT,
RAMON CRUZ-MAGALLANES,
JESS MARTINEZ,
ROBERT ABRAHAM CRAIL,
LLOYD WILBUR FURNACE,
CONRAD D. KOHLER,
ORLO EMMONS CHRISTY,
CHARLES J. TELFORD,
JOSE LUIS GONZALES RODRIGUEZ,

Defendants.

No. 4710 Criminal
INDICTMENT

Title 18, U.S.C., Section 371-Conspiracy; Title 18, U.S.C., Section 2314-Causing travel in furtherance of fraudulent scheme; Title 18, U.S.C., Section 1343-Fraud by wire.

The Grand Jury charges:

COUNT ONE

(Title 18, U. S. C., Sec. 371)

Beginning at a date unknown to the Grand Jury and continuing until on or about November 19, 1968, within the jurisdiction of this Court, defendants NORMAN NATIVIDAD, ROBERT LEE BLEVINS, MITCHELL P. CHRISTENSEN, WILLIAM EBBIN KELLY, JR., CARROLL LANGFORD SNEED, ANTHONY UMBERTO ROSSI, VICENTE VARELA-LORES, ELEONOR DE LA GARZA, BROOX HOYT, RAMON CRUZ-MAGALLANES, JESS MARTINEZ, ROBERT ABRAHAM CRAIL, LLOYD WILBUR FURNACE, CONRAD D. KOHLER, ORLO EMMONS CHRISTY, CHARLES J. TELFORD, JOSE LUIS GONZALES RODRIGUEZ, AND DIVERS OTHER PERSONS to the Grand Jury unknown, unlawfully, wilfully, and knowingly conspired, agreed, and confederated together to commit offenses against the United States as follows: to devise schemes and artifices to defraud others of money by means of false and fraudulent pretenses, representations, and promises, having knowledge of the falsity when made, causing conversation, telegrams, and telegraphic wire transfers of funds to be transmitted by means of wire communication in interstate and foreign commerce for the purpose of executing said schemes and artifices to defraud in violation of Title 18, United States Code, Section 1343; and to cause and induce other persons to travel in interstate and foreign commerce in the execution of the above-described schemes and artifices to defraud, which were schemes and artifices to defraud the travelling persons of money of a value of more than $5,000, in violation of Title 18, United States Code, Section

2314.

To effect the object of said conspiracy, the defendants committed divers overt acts, including, but not limited to, the following:

1. That on or about January 22, 1968, defendant CHARLES J. TELFORD introduced Hartley J. Bell to defendant NORMAN NATIVIDAD at Tijuana, B. C., Mexico.

2. That on or about May 22, 1968, defendants NORMAN NATIVIDAD and VICENTE VARELA-LORES received $60,000 from Hartley J. Bell at Tijuana, B. C., Mexico.

3. That on or about May 22, 1968, defendants VICENTE VARELA-LORES and ROBERT LEE BLEVINS gave Hartley J. Bell a non-sufficient funds check in the amount of $60,000.

4. That on or about May 28, 1968, defendant NORMAN NATIVIDAD accompanied Hartley J. Bell to Mexico City to accept delivery of "platinum."

5. That in mid-April 1968, defendant BROOX HOYT introduced Henry A. Williams to defendant NORMAN NATIVIDAD.

6. That on or about May 2, 1968, at Tijuana, B. C., Mexico, defendant NORMAN NATIVIDAD hosted a meeting between defendant BROOX HOYT, defendant ROBERT LEE BLEVINS, Martin Goldman, Henry A. Williams and Seymour Flax.

7. That on or about May 2, 1968, at San Diego, California, defendant ANTHONY UMBERTO ROSSI took $100,000 from Henry A. Williams and failed to deliver two bars of platinum.

8. That on or about May 8, 1968 at San Diego, California, defendant ANTHONY UMBERTO ROSSI took $78,000 from defendant CHARLES J. TELFORD and failed to deliver two bars of platinum.

9. That on or about November 19, 1968,

at Tijuana, B.C., Mexico, defendants NORMAN NATIVIDAD, VICENTE VARELA-LORES, JOSE LUIS GONZALES RODRIGUEZ and ELEONOR DE LA GARZA met with Warren C. Moore and William J. Mason to arrange for sale of "platinum."

10. That on or about November 19, 1968, at Tijuana, B.C., Mexico, defendant NORMAN NATIVIDAD received $120,000 from Warren C. Moore.

11. That on or about November 25, 1968, defendant NORMAN NATIVIDAD accompanied Warren C. Moore and William J. Mason to Guaymas, Mexico.

12. That on or about August 3, 1968, at San Diego, California, defendant CARROLL LANGFORD SNEED signed an agreement with Robert Bowles for the delivery of 40,000 ounces of platinum.

13. That on or about August 3, 1968, defendant JESS MARTINEZ witnessed an agreement between defendant CARROLL LANGFORD SNEED and Robert Bowles.

14. That on or about August 20, 1968, defendants JESS MARTINEZ, NORMAN SNEED received $3,000 from Robert Bowles.

15. That in August 1968, defendant ROBERT ABRAHAM CRAIL telephonically contacted Frank Terranova advising platinum was available in San Diego, California, stating that the platinum would be available through defendant CARROLL LANGFORD SNEED and would be subject to assay by defendant MITCHELL P. CHRISTENSEN.

16. That on or about August 16, 1968, defendant MITCHELL P. CHRISTENSEN, during telephone conversation, advised Frank Terranova and Martin Goldman that he(Christensen) was in possession of two bars of platinum.

17. That on or about August 22, 1968, at

San Diego, California, defendant MITCHELL P. CHRISTENSEN produced two metal bars from his bank safety deposit box and exhibited them to Frank Terranova and Leon Gray.

18. That on or about August 27, 1968, defendant ROBERT ABRAHAM CRAIL and Al Joseph contacted Special Agent William S. Fields at La Jolla, California, in an attempt to arrange for delivery of platinum.

19. That on or about August 28, 1968, defendants ROBERT ABRAHAM CRAIL and CARROLL LANGFORD SNEED contacted Agent Fields.

20. That on or about August 28, 1968, defendants CARROLL LANGFORD SNEED and JESS MARTINEZ contacted Agent Fields, stating two bars of platinum could be made available for $120,000.

21. That on or about August 30, 1968 at San Diego, California, defendant RAMON CRUZ-MAGALLANES contacted Agent Fields, stating 10,000 ounces of platinum were available.

22. That on an unknown date in 1968, defendant RAMON CRUZ-MAGALLANES persuaded Agostino Amato and Kenneth Sans to place $125,000 in escrow for the purchase of platinum.

23. That in August 1968, defendant RAMON CRUZ-MAGALLANES contacted Martin Goldman advising platinum was available.

24. That on or about July 27, 1968, defendant LLOYD WILBUR FURNACE signed a letter addressed to defendant RAMON CRUZ-MAGALLANES, indicating a $9,000,000 letter of credit would be available to secure the purchase of 40,000 ounces of platinum.

25. That on or about August 2, 1968, defendant RAMON CRUZ-MAGALLANES and defendant LLOYD WILBUR FURNACE entered into a contract for sale of platinum by defendant

RAMON CRUZ-MAGALLANES and purchase by defendant LLOYD WILBUR FURNACE.

26. That on or about August 16, 1968, at San Diego, California, defendant WILLIAM EBBIN KELLY, JR., signed an agreement for the delivery of platinum to Frank Dillman.

27. That on or about August 17, 1968, at Miami, Florida, defendant CONRAD D. KOHLER dispatched a telegram to San Diego, California authorizing the purchase of 50,000 units of platinum from Frank Dullman.

28. That on or about August 20, 1968, defendants ORLO EMMONS CHRISTY and WILLIAM EBBIN KELLY, JR., contacted Southern California 1st National Bank, International Department, to arrange for a letter verifying receipt to telegram from defendant CONRAD D. KOHLER.

29. That on or about August 28, 1968, defendant WILLIAM EBBIN KELLY, JR., contacted Special Agent William S. Fields at La Jolla, California, and said that he was in a position to deliver platinum.

30. That on or about August 30, 1968, defendant WILLIAM EBBIN KELLY, JR., and defendant ORLO EMMONS CHRISTY contacted Special Agent Fields at La Jolla, California.

31. That on or about August 30, 1968, defendant ORLO EMMONS CHRISTY advised Special Agent Fields that he had buyers in Switzerland and Chicago, who would purchase platinum from Agent Fields.

32. That on or about March 27, 1967, defendant ANTHONY UMBERTO ROSSI took $37,500 from Paul Barry Sogg at Buena Park, California.

33. That in September, 1967, defendants VICENTE VARELA-LORES and ELEONOR DE LA GARZA contacted Harry Norman Royster in order to effect alleged platinum transaction.

34. That on or about September 12, 1967, defendant VICENTE VARELA-LORES caused Harry Royster to withdraw $98,500 from Bank of America, Main Office, San Diego, California.

35. That in early 1967, defendant BROOX HOYT advised Daniel Daniels and Mooris Jacobs that platinum could be purchased through defendants NORMAN NATIVIDAD and VICENTE VARELA-LORES in Tijuana, B.C., Mexico.

36. That on or about July 2, 1968, defendant VICENTE VARELA-LORES received $20,000 from John Ford at Tijuana, B.C., Mexico.

37. That on or about July 8, 1968, defendant VICENTE VARELA-LORES RECEIVED $20,000 from John Ford at Tijuana, B.C., Mexico.

COUNT TWO

(Title 18, U.S.C., Sec. 2314)

Prior to the 2nd day of May, 1968, and continuing to the 30th day of August 1968, defendants NORMAN NATIVIDAD, ROBERT LEE BLEVINS, ANTHONY UMBERTO ROSSI and BROOX HOYT, devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations, and promises.

On or about the 2nd day of May 1968, in

the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused and induced Martin Goldman and Henry A. William, III to travel in interstate commerce from New York, New York, to San Diego County, California in the execution of the said scheme or artifice to defraud the said Martin Goldman and Henry A. Williams III of money of a value of more than $5,000.

COUNT THREE

(Title 18, U.S.C., Sec. 2314)

Prior to the 2nd day of May, 1968, and continuing to the 30th day of August 1968, defendants MITCHELL P. CHRISTENSEN, ROBERT ABRAHAM CRAIL, and CARROLL LANGFORD SNEED, devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers, that huge quantities of platinum were avialable for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations, and promises.

On or about the 20th day of August 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused and

induced Martin Goldman and Frank Terranova to travel in interstate commerce from New York, New York, to San Diego County, California, in the execution of the said scheme or artifice to defraud the said Martin Goldman and Frank Terranova of money of a value of more than $5,000.

COUNT FOUR

(Title 18, U.S.C., Sec. 2314)

Prior to the 2nd day of May, 1968, and continuing to the 30th day of August 1968, defendant RAMON CRUZ-MAGALLANES devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations, and promises would be false when made: that he intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other allged security represented substantial value; and other false and fraudulent pretenses, representations, and promises.

On or about the 30th day of August 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendant, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused and induced Agostino Amato to travel in interstate commerce from Miami, Florida to Chula Vista, San Diego County, California, in the execution of the said scheme or artifice to defraud the said Agostino Amato of money of a value of more than $5,000.

COUNT FIVE

(Title 18, U.S.C., Sec. 1343)

Prior to the 3rd day of August, 1968, and continuing to the 19th day of November 1968, defendants CHARLES J. TELFORD, JOSE LUIS GONZALES RODRIGUEZ, VICENTE VARELA-LORES, NORMAN NATIVIDAD, ROBERT LEE BLEVINS, and ANTHONY UMBERTO ROSSI devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representation, and promises, well knowing at the time that the pretenses, representations, and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations and promises.

On or about the 29th day of April 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused a telephone communication to be transmitted in foreign commerce, from San Diego, California to Zurich, Switzerland.

COUNT SIX

(Title 18, U.S.C., Sec. 1343)

Prior to the 3rd day of August, 1968, and continuing to the 19th day of November 1968,

defendants NORMAN NATIVIDAD, JOSE LUIS GONZALES RODRIGUEZ, VICENTE VARELA-LORES, ELEONOR DE LA GARZA devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations and promises.

On or about the 18th day of November 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused a telegraphic wire transfer of funds to be transmitted by means of wire communication in interstate commerce, from East Liverpool, Ohio, to San Diego County, California.

A TRUE BILL:

/s/ illegible
Foreman

/s/ Edwin L. Miller, Jr.
EDWIN L. MILLER, JR.
United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

November 1968 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

NORMAN NATIVIDAD,
ROBERT LEE BLEVINS,
MITCHELL P. CHRISTENSEN,
WILLIAM EBBIN KELLY, JR.,
CARROLL LANGFORD SNEED,
ANTHONY UMBERTO ROSSI,
VICENTE VARELA-LORES,
ELEONOR DE LA GARZA,
BROOX HOYT,
RAMON CRUZ-MAGALLANES,
JESS MARTINEZ,
ROBERT ABRAHAM CRAIL,
LLOYD WILBUR FURNACE,
CHARLES J. TELFORD,
JOSE LUIS GONZALEZ RODRIGUEZ,
WILLIAM J. MASON,
GEORGE HEFFERNAN,

Defendants.

No. 5427 Criminal

INDICTMENT

Title 18, U.S.C., Sec. 371-Conspiracy; Title 18, U.S.C., Sec. 2314-Causing travel in furtherance of fraudulent scheme; Title 18, U.S.C., Sec. 1343-Fraud by wire

The Grand Jury charges:

COUNT ONE

(Title 18, U.S.C., Sec. 371)

Beginning at a date unknown to the Grand Jury and continuing until on or about November 19, 1968, within the jurisdiction of this Court, defendants NORMAN NATIVIDAD, ROBERT LEE BLEVINS, ANTHONY UMBERTO ROSSI, VICENTE VARELA-LORES, ELEONOR DE LA GARZA, BROOX HOYT, CHARLES J. TELFORD, JOSE LUIS GONZALEZ RODRIGUEZ, WILLIAM J. MASON, and divers other persons to the Grand Jury unknown, unlawfully, willfully, and knowingly conspired, agreed and confederated together to commit offenses against the United States as follows: to devise schemes and artifices to defraud others of money by means of false and fraudulent pretenses, representations and promises, having knowledge of the falsity when made, causing conversation, telegrams, and telegraphic wire transfers of funds to be transmitted by means of wire communication in interstate and foreign commerce for the purpose of executing said schemes and artifices to defruad, in violation of Title 18, United States Code, Section 1343; and to cause and induce other persons to travel in interstate and foreign commerce in the execution of the above-described schemes and artifices to defraud, which were schemes and artifices to defraud the travelling persons of money of a value of more than $5,000, in violation of Title 18, United States Code, Section 2314.

To effect the object of said conspiracy, the defendants committed divers overt acts, including, but not limited to, the following:

1. That on or about January 22, 1968, defendant CHARLES J. TELFORD introduced Hartley J. Bell to defendant NORMAN NATIVIDAD at Tijuana, B.C., Mexico.

2. That on or about May 22, 1968, defendants NORMAN NATIVIDAD and VICENTE VARELA-LORES received $60,000 from Hartley J. Bell at Tijuana, B.C., Mexico.

3. That on or about May 22, 1968, defendants VICENTE VARELA-LORES and ROBERT LEE BLEVINS gave Hartley J. Bell a non-sufficient funds check in the amount of $60,000.

4. That on or about May 28, 1968, defendant NORMAN NATIVIDAD accompanied Hartley J. Bell to Mexico City to accept delivery of alleged "platinum."

5. That in mid-April 1968, defendant BROOX HOYT introduced Henry A. Williams to defendant NORMAN NATIVIDAD.

6. That on or about May 2, 1968, at Tijuana, B.C., Mexico, defendant NORMAN NATIVIDAD hosted a meeting between defendant BROOX HOYT, defendant ROBERT LEE BLEVINS, Martin Goldman, Henry A. Williams, and Seymour Flax.

7. That on or about May 2, 1968, at San Diego, California, defendant ANTHONY UMBERTO ROSSI took $100,000 from Henry A. Williams and failed to deliver two bars of platinum.

8. That on or about May 8, 1968 at San Diego, California, defendant ANTHONY UMBERTO ROSSI took $78,000 from defendant CHARLES J. TELFORD and failed to deliver two bars of platinum.

9. That on or about November 19, 1968, at Tijuana, B.C., Mexico, defendants NORMAN NATIVIDAD, VICENTE VARELA-LORES, JOSE LUIS GONZALES RODRIGUEZ, WILLIAM J. MASON, and ELEONOR DE LA GARZA met

with Waren C. Moore to arrange for alleged sale of "platinum."

10. That on or about November 19, 1968, at Tijuana, B. C., Mexico, defendant NORMAN NATIVIDAD received $120,000 from Warren C. Moore.

11. That on or about November 25, 1968, defendants NORMAN NATIVIDAD and WILLIAM J. MASON accompanied Warren C. Moore to Guaymas, Mexico.

12. That on or about March 27, 1967, defendant ANTHONY UMBERTO ROSSI took $37,500 from Paul Barry Sogg at Buena Park, California.

13. That in September, 1967, defendants VICENTE VARELA-LORES and ELENOR DE LA GARZA contacted Harry Norman Royster in order to negotiate an alleged platinum transaction.

14. That on or about September 12, 1967, defendant VICENTE VARELA-LORES caused Harry Royster to withdraw $98,500 from Bank of America, Main Office, San Diego, California.

15. That in early 1967, defendant BROOX HOYT advised Daniel Daniels and Morris Jacobs that platinum could be purchased through defendants NORMAN NATIVIDAD and VICENTE VARELA-LORES in Tijuana, B. C., Mexico.

16. That on or about July 2, 1968, defendant VICENTE VARELA-LORES received $20,000 from John Ford at Tijuana, B. C., Mexico.

17. That on or about July 8, 1968, defendant VICENTE VARELA-LORES received $20,000 from John Ford at Tijuana, B. C., Mexico.

COUNT TWO

(Title 18, U.S.C., Sec. 371)

Beginning at a date unknown to the Grand Jury and continuing until on or about November 19, 1968, within the jurisdiction of this court, defendants NORMAN NATIVIDAD, ROBERT ABRAHAM CRAIL, MITCHELL P. CHRISTENSEN, CARROLL LANGFORD SNEED, WILLIAM EBBIN KELLY, JR., GEORGE HEFFERNAN, JESS MARTINEZ, ROBERT LEE BLEVINS, WILLIAM J. MASON, and divers other persons to the Grand Jury unknown, unlawfully, willfully, and knowingly conspired, agreed, and confederated together [redacted]mmit offenses against the United States as [redacted]: to devise schemes and artifices to defraud others of money by means of false and fraudulent pretenses, representation, and promises, having knowledge of the falsity when made, causing conversation, telegrams, and telegraphic wire transfers of funds to be transmitted by means of wire communication in interstate and foreign commerce for the purpose of executing said schemes and artifices to defraud, in violation of Title 18, United States Code, Section 1343; and to cause and induce other persons to travel in interstate and foreign commerce in the execution of the above-described schemes and artifices to defraud, which were schemes and artifices to defraud the travelling persons of money of a value of more than $5,000, in violation of Title 18, United States Code, Section 2314.

To effect the object of said conspiracy, the defendants committed divers overt acts, including, but not limited to, the following:

1. That on or about August 3, 1968, at San Diego, California, defendant CARROLL

LANGFORD SNEED signed an agreement with Robert Bowles for the delivery of 40,000 ounces of alleged platinum.

2. That on or about August 3, 1968, defendant JESS MARTINEZ witnessed an agreement between defendant CARROLL LANGFORD SNEED and Robert Bowles.

3. That on or about August 20, 1968, defendants JESS MARTINEZ, NORMAN NATIVIDAD, and CARROLL LANGFORD SNEED received $3,000 from Robert Bowles.

4. That in August 1968, defendent ROBERT ABRAHAM CRAIL telephonically contacted Frank Terranova advising that platinum was available in San Diego, California, stating that the platinum would be available through defendant CAROLL LANGFORD SNEED and would be subject to assay be defendant MITCHELL P. CHRISTENSEN.

5. That on or about August 16, 1968, defendant MITCHELL P. CHRISTENSEN, during telephone conversation, advised Frank Terranova and Martin Goldman that he (Christensen) was in possession of two bars of platinum.

6. That on or about August 22, 1968, at San Diego, California defendant MITCHELL P. CHRISTENSEN produced two metal bars from his bank safety deposit box and exhibited them to Frank Terranova and Leon Gray.

7. That on or about August 27, 1968, defendant ROBERT ABRAHAM CRAIL and Al Joseph contacted William S. Fields at La Jolla, California, in an alleged attempt to arrange for delivery of patinum.

8. That on or about August 28, 1968, defendants ROBERT ABRAHAM CRAIL and CARROLL LANGFORD SNEED contacted William Fields.

9. That on or about August 28, 1968, defendants CARROLL LANGFORD SNEED and

JESS MARTINEZ contacted William Fields, stating two bars of platinum could be made available for $120,000.

10. That on or about August 16, 1968, at San Diego, California, defendant WILLIAM EBBIN KELLY, JR., signed an agreement for the delivery of alleged platinum to Frank Dillman.

11. That on or about August 28, 1968, defendant WILLIAM EBBIN KELLY, JR., contacted William S. Fields at La Jolla, California, and said that he was in a position to deliver platinum.

COUNT THREE

(Title 18, U.S.C., Sec. 371)

Beginning at a date unknown to the Grand Jury and continuing until on or about November 19, 1968, within the jurisdiction of this Court, defendants RAMON CRUZ-MAGALLANES, LLOYD WILBUR FURNACE, ROBERT ABRAHAM CRAIL, and divers other persons to the Grand Jury unknown, unlawfully, willfully, and knowingly conspired, agreed, and confederated together to commit offenses against the United States as follows: to devise schemes and artifices to defraud others of money by means of false and fraudulent pretenses, representations, and promises, having knowledge of the falsity when made, causing conversation, telegrams, and telegraphic wire transfers of funds to be transmitted by means of wire communication in interstate and foreign commerce for the purpose of executing said schemes and artifices to defraud, in violation of Title 18, United States Code, Section 1343; and to cause and induce other persons to travel in interstate and foreign commerce in the execution of the above-described schemes and artifices to defraud, which were schemes and

artifices to defraud the travelling persons of money of a value of more than $5,000, in violation of Title 18, United States Code, Section 2314.

To effect the object of said conspiracy, the defendants committed divers overt acts, including, but not limited to, the following:

1. That on or about August 30, 1968, in San Diego, California, defendant RAMON CRUZ-MAGALLANES contacted William Fields, stating that 10,000 ounces of platinum were available.

2. That on an unknown date in 1968, defendant RAMON CRUZ-MAGALLANES persuaded Agostino Amato and Kenneth Sans to place $125,000 in escrow for the purchase of alleged platinum.

3. That in August, 1968, defendant RAMON CRUZ-MAGALLANES contacted Martin Goldman advising that platinum was available.

4. That on or about July 27, 1968, defendant LLOYD WILBUR FURNACE signed a letter addressed to defendant RAMON CRUZ-MAGALLANES, indicating a $9,000,000 letter of credit would be available to secure the purchase of 40,000 ounces of platinum.

5. That on or about August 2, 1968, defendant RAMON CRUZ-MAGALLANES and defendant LLOYD WILBUR FURNACE entered into a contract for the sale of alleged platinum by defendant RAMON CRUZ-MAGALLANES and purchase by defendant LLOYD WILBUR FURNACE.

COUNT FOUR

(Title 18, U.S.C., Sec. 2314)

Prior to the 2nd day of May, 1968, and continuing to the 30th day of August 1968, defendants NORMAN NATIVIDAD, ROBERT LEE BLEVINS, ANTHONY UMBERTO ROSSI and

BROOX HOYT, devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations, and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations, and promises.

On or about the 2nd day of May 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused and induced Martin Goldman and Henry A. Williams III to travel in interstate commerce from New York, New York, to San Diego County, California, in the execution of the said scheme or artifice to defraud the said Martin Goldman and Henry A. Williams III of money of a value of more than $5,000.

COUNT FIVE

(Title 18, U.S.C., Sec. 2314)

Prior to the 2nd day of May, 1968, and continuing to the 30th day of August 1968, defendants MITCHELL P. CHRISTENSEN, ROBERT ABRAHAM CRAIL, and CARROLL LANGFORD SNEED, devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property be means of the following false and fraudu-

lent pretenses, representations, and promises, well knowing at the time that the pretenses, representations and promises would be false when made; that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations, and promises.

On or about the 20th day of August 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused and induced Martin Goldman and Frank Terranova to travel in interstate commerce from New York, New York, to San Diego County, California, in the execution of the said scheme or artifice to defraud the said Martin Goldman and Frank Terranova of money of a value of more than $5,000.

COUNT SIX

(Title 18, U.S.C., Sec. 2314)

Prior to the 2nd day of May, 1968, and continuing to the 30th day of August 1968, defendant RAMON CRUZ-MAGALLANES devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations and promises would be false when made: that he intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere;

that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations, and promises.

On or about the 30th day of August 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendant, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused and induced Agostino Amato to travel in interstate commerce from Miami, Florida to Chula Vista, San Diego, County, California, in the execution of the said scheme or artifice to defraud the said Agostino Amato of money of a value of more than $5,000.

COUNT SEVEN

(Title 18, U.S.C., Sec. 1343)

Prior to the 3rd day of August, 1968, and continuing to the 19th day of November, 1968, defendants CHARLES J. TELFORD, JOSE LUIS GONZALES RODRIGUEZ, VICENTE VARELA-LORES, NORMAN NATIVIDAD, ROBERT LEE BLEVINS, and ANTHONY UMBERTO ROSSI devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations, and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations

and promises.

On or about the 29th day of April 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused a telephone communication to be transmitted in a foreign commerce, from San Diego, California to Zurich, Switzerland.

COUNT EIGHT

(Title 18, U.S.C., Sec. 1343)

Prior to the 3rd day of August, 1968, and continuing to the 19th day of November, 1968, defendants NORMAN NATIVIDAD, JOSE LUIS GONZALES RODRIGUEZ, VICENTE VARELA-LORES, ELEONOR DE LA GARZA devised and intended to devise a scheme and artifice to defraud other persons and business organizations and to obtain money and property by means of the following false and fraudulent pretenses, representations, and promises, well knowing at the time that the pretenses, representations and promises would be false when made: that they intended to fulfill agreements to deliver platinum to American buyers; that huge quantities of platinum were available for sale in the Western Hemisphere; that sample metal bars consisted of platinum; that checks or other alleged security represented substantial value; and other false and fraudulent pretenses, representations and promises.

On or about the 18th day of November 1968, in the Southern District of California and within the jurisdiction of this Court, the said defendants, for the purpose of executing the aforesaid scheme and artifice and attempting to do so, caused a telegraphic wire transfer of funds to be transmitted by means of wire communica-

tion in interstate commerce, from East Liverpool, Ohio, to San Diego County, California

A TRUE BILL:

/s/ illegible
Foreman

/s/ Edwin L. Miller
EDWIN L. MILLER, JR.
United States Attorney

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1564

ROBERT LEE BLEVINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. I) is reported at 436 F. 2d 1385.

JURISDICTION

The judgment of the court of appeals was entered on February 5, 1971, and a petition for rehearing was denied on March 9, 1971 (Pet. App. II). The petition for a writ of certiorari was filed on April 9, 1971, and is out of time under Rule 22(2). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner's conviction of a conspiracy violation under 18 U.S.C. 371 was improper because

hearsay evidence of acts of co-conspirators was admitted or because the scheme involved allegedly unrelated transactions.

2. Whether petitioner's conviction was improper because some overt acts occurred outside the United States and involved foreign nationals.

3. Whether the district court correctly instructed the jury with regard to the proof necessary for conviction.

4. Whether petitioner was denied his right to a speedy trial.

5. Whether 18 U.S.C. 2314 was correctly charged and applied in this case.

STATEMENT

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted on one count of conspiracy (18 U.S.C. 371) to violate 18 U.S.C. 1343 (fraud by wire) and 18 U.S.C. 2314 (fraud by use of interstate facilities), and another count charging a substantive violation of 18 U.S.C. 2314. He received concurrent four year prison sentences and was fined $5,000 on each count (II R. 475).[1] The court of appeals affirmed *per curiam*. (Pet. App. I).

In general, the evidence showed that petitioner was a key figure in an elaborate scheme to defraud specu-

[1] The various documents and transcripts comprising the ten volume transcript of the record on file in this Court have not been repaginated consecutively from beginning to end. "R.", preceded by a volume number and followed by a page number, refers to volumes one through five; "Tr.", followed by a page number, refers to the transcript of testimony contained in volumes six through ten.

lators in platinum. The conspirators offered to sell to their victims platinum, supposedly located in Mexico, at prices substantially below the market. They then demanded from the victims large sums of money as advance payments, purportedly to cover the cost of "export permits" and other necessary expenses connected with removing the platinum from Mexico. The "permits" were never obtained and each deal fell through in a similar fashion, with petitioner and his confederates retaining the advance payments.

1. In February 1967, petitioner agreed to sell to Morris Jacobs and Daniel Daniels fifty thousand ounces of platinum supposedly located in Mexico. The agreement included arrangements for two co-indictees, Norman Natividad and Vincent Varela-Lores ("Varela"), to obtain permits and licenses to transport the platinum from Mexico to Europe and to provide transportation. Petitioner asked Jacobs and Daniels for $80,000 to pay for these items (Tr. 635–639).

During late March or April of 1967, the parties met at Natividad's house in Tijuana, Mexico and decided that a bar of platinum would be provided as security for the advance payment from Jacobs and Daniels (Tr. 639–640). Later in April, petitioner again conferred with Jacobs concerning the transaction, this time in San Diego (Tr. 640–642). In June or July of 1967, $20,000 in cash was paid towards the advance; petitioner then agreed to complete the transaction if Jacobs and Daniels would provide another $20,000. This payment was made about a week later,[2] and

[2] Both $20,000 payments were made in Tijuana.

Jacobs was promised the "security"—the bar of platinum—within three days (Tr. 643–645, 732–733).

Natividad called Jacobs a few days thereafter, and advised that the bar of platinum would be delivered in Guadalajara, Mexico. Daniels accompanied Natividad there (Tr. 646–647). Upon arriving, both men were jailed, according to Natividad, by the "federales." Natividad told Daniels that petitioner and Varela, whom they later saw and were asked to identify, had also been arrested. A purported "deal" for their release on payment of $1,000 was arranged by Natividad with the "federales". Daniels refused Natividad's request for part of this pay-off (Tr. 708–710).

Several months later petitioner telephoned Jacobs that the platinum had been confiscated by the Mexican government. Jacobs and Daniels met in Mexico with petitioner and Varela, who claimed that authorities had jailed and beaten them at Guadalajara. They reported they were trying to reclaim the platinum "through people they knew" and asked for an additional expense advance, which was refused (Tr. 647–649). The dealings then terminated.

2. On January 15, 1968, one Hartley Bell, a Canadian, met at Natividad's house in Tijuana with petitioner, Natividad, and Varela, and agreed to purchase thirty-four thousand ounces of platinum from petitioner (Tr. 496–506). Natividad and another coindictee, Telford, telephoned Bell on May 21. Bell withdrew $60,000 from the Bank of America in San Diego fol-

lowing the telephone call, and the next day delivered it to Natividad, petitioner, and Varela for permits to export the platinum from Mexico. In return, Bell received a contract and a $60,000 check drawn by petitioner. (Tr. 509, 512).

On May 29, Bell and Natividad traveled to Mexico City to get two bars of platinum (Tr. 513–514). There they were arrested and jailed by "federal agents." Varela and petitioner were also at the jail, in another cell. After several hours, Bell and petitioner were released and Bell returned to Los Angeles (Tr. 515–516). Bell did not receive the permits or any platinum, and petitioner's check was returned because of insufficient funds (Tr. 512–513).

3. In April of 1968, one Henry Williams, having traveled from New York to California, met at Natividad's house with Natividad, petitioner, and one "Vince" (Tr. 573). Petitioner claimed that he had connections throughout Mexico and with the Mexican government, and told Williams he would sell him forty thousand ounces of platinum (Tr. 573–574). Petitioner disagreed with the terms proposed by Williams and purportedly withdrew (Tr. 592–593).

Williams returned from New York to Tijuana on May 2 and met with Natividad and one "Juan". The three agreed to a platinum sale. Juan was to deliver the platinum to Williams at the Grant Hotel in San Diego, for which Williams would pay $100,000. Williams and Juan were then to take the platinum to be assayed for value (Tr. 576, 580). Williams, with his $100,000, met Juan as agreed at the hotel. Although petitioner supposedly was not involved, Williams saw him standing across from the hotel. After obtaining

the $100,000, Juan refused to deliver the platinum, threatened to kill Williams, and drove off with the money. Williams never received the platinum or a refund of the money (Tr. 581–588).[3]

4. In December 1967, one Mason met at Natividad's home with Natividad and petitioner to discuss Mason's interest in purchasing platinum (Tr. 548–551). Mason drove from Nevada to Tijuana on July 2, 1968, and again discussed a platinum purchase with petitioner, Natividad, Varela, and others. Petitioner agreed to sell forty thousand ounces of platinum to Mason's company, Tonopah-King, Inc. (Tr. 551–553).

Mason and his business associate, Warren Moore, returned to Natividad's house on November 18, 1968 (Tr. 555–558). Moore gave Natividad, Varela, and another co-indictee, Rodriguez, $120,000 for export permits (Tr. 556–558, 567); petitioner was not then present (Tr. 562). Four days later, Mason and Natividad were arrested in Mexico while waiting for Varela and others (Tr. 562–563). Mason and Moore never received the export permits.

ARGUMENT

1. Petitioner's principal contention concerns the admission of evidence "as to conversations between

[3] One of Williams' confederates, Goldman, was convicted for his activities following Williams' loss of the $100,000. He has filed a petition for a writ of certiorari in connection with that conviction, to which the government is presently preparing a response. *Goldman* v. *United States*, No. 1704, this Term. The conviction of Goldman's co-defendant, Catalano, is also pending on his petition for a writ of certiorari. *Catalano* v. *United States*, No. 1736, this Term.

alleged victims and unapprehended alien alleged co-conspirators" (Pet. 20). He challenges the recognized co-conspirator exception to the hearsay rule and attempts to distinguish his case from this Court's recent decision in *Dutton* v. *Evans,* 400 U.S. 74.

This contention is without substance. The evidence supporting petitioner's conviction concerns largely his own actions and representations. Evidence regarding statements made by his co-conspirators was admitted under the recognized rule that such statements are part of the execution of the conspiracy and have been impliedly authorized by the other parties to the scheme. This was entirely correct. See *Dutton* v. *Evans,* 400 U.S. 74, 81.[4]

Nor is there merit to petitioner's contention (Pet. 22–27) that the conspiracy charge (Count I) against him was invalid because it combined as a single conspiracy what were in fact multiple conspiracies involving different people, different subjects, and different substantive offenses. Petitioner and his immediate confederates, Natividad and Valera, were at the center of an elaborate scheme. The fact that they employed this scheme on several occasions and with different victims does not indicate multiple conspiracies or improper joinder. Since each transaction was part of "a single, over-all, comprehensive plan," the

[4] Petitioner asserts (Pet. 21–22) that this rule violates both the Fifth and the Sixth Amendments. This is not an acceptable proposition in view of this Court's declaration in *Dutton* v. *Evans*, *supra* (400 U.S. at 80), that "we do not question the validity of the coconspirator exception applied in the federal courts."

charge of a single conspiracy was correct. *Blumenthal* v. *United States*, 332 U.S. 539, 558. And the conspiracy was one crime, however diverse its objects, under 18 U.S.C. 371, which carries its own penalties; thus petitioner was in no way prejudiced because the conspiracy alleged violations of two substantive provisions (18 U.S.C. 1343 and 18 U.S.C. 2314) with differing penalties. See *Braverman* v. *United States*, 317 U.S. 49, 54.[5]

2. Petitioner contends (Pet. 33–39) that the courts below lacked jurisdiction because many of the overt

[5] Petitioner challenges his conspiracy conviction on two additional grounds. He argues (Pet. 23) that evidence as to events occurring in connection with the Mason-Moore transaction in November 1968—the $120,000 payment and Mason's arrest—was improperly admitted because the FBI had arrested him earlier in September. Although the FBI arrested petitioner in September, and indeed again in October (Tr. 816–817), he was presumably free on bond in November; the second arrest warrant states "* * * released on $5,000 P/S Bond. Was not committed" (IV R. 171). Moreover, even if petitioner was in jail in November, the November happenings were properly admitted since those events were merely the culmination of the overall conspiracy in which petitioner had participated from the bginning. See *United States* v. *Agueci*, 310 F. 2d 817, 839 (C.A. 2), certiorari denied, 372 U.S. 959. The *Sandez* case, on which petitioner relies (Pet. 23), involved statements made *after* the conspiracy had ended, and thus is readily distinguishable. The writ of certiorari in *Bostic* v. *United States*, No. 5250, this Term, on which petitioner also relies, was dismissed on May 24, 1971, as improvidently granted.

Petitioner also urges that prosecution of one for the substantive offense of conspiracy "makes him so vicariously liable for crimes committed by others" as to deprive him of a fair trial and of due process of law. This Court has never accepted this contention, as indicated by its decision in *Dutton* v. *Evans*, *supra*.

acts occurred outside the territorial jurisdiction of the United States and involved foreign nationals. But petitioner, a United States citizen, participated in a federal offense committed in part within the United States; in these circumstances, his case is well within the jurisdiction of the federal courts. See *United States* v. *Bowman,* 260 U.S. 94; *Charron* v. *United States,* 412 F. 2d 657, 659 (C.A. 9); *Brulay* v. *United States,* 383 F. 345, 349–350 (C.A. 9), certiorari denied, 389 U.S. 986; *United States* v. *Braverman,* 376 F. 2d 249, 251 (C.A. 2), certiorari denied, 389 U.S. 885; *Rivard* v. *United States,* 375 F. 2d 882, 885–888 (C.A. 5), certiorari denied *sub nom. Groleau* v. *United States,* 389 U.S. 884; *Ramey* v. *United States,* 230 F. 2d 171 (C.A. 5).

3. The trial court declined petitioner's request (see Pet. 40–44) to instruct the jury that since the government's case rested on circumstantial evidence, they must find that the circumstances were irreconcilable with any rational conclusion other than guilt in order to convict. As noted above, the evidence as to petitioner was primarily direct, not circumstantial. In any event, the court properly declined petitioner's request, in accordance with the "better rule." *Holland* v. *United States,* 348 U.S. 121, 139–140; see also *Sablan* v. *People of Territory of Guam,* 434 F. 2d 837, 839 (C.A. 9); *United States* v. *Nelson,* 419 F. 2d 1237, 1240–1241 (C.A. 9).

4. Petitioner claims (Pet. 44–45) that he was denied a speedy trial. He was first arrested on September 24, 1968 (Tr. 816), and the original indictment was filed

December 11, 1968 (V R. 1). On October 31, 1969, petitioner moved for trial on November 28, 1969, instead of the trial date then set, February 2, 1970. This request, while urging that petitioner was constitutionally entitled to a speedy trial, was principally grounded on his contention that he was entitled to be tried with another co-indictee, Christensen, whose trial had been severed by stipulation and set for trial on the November date (III R. 215–217). The prosecutor objected to a joint trial with Christensen (Tr. 285–286); and petitioner's counsel earlier conceded that his claim did not raise a "speedy trial problem in that as to all defendants there had been a waiver" (Tr. 283–284). The Christensen trial did not actually begin until January 12, 1970 (Tr. 346–347). Petitioner's trial commenced several weeks later, on February 9, 1970 (Tr. 389).

There is no occasion on this record to consider petitioner's assertion. Petitioner, though he claims prejudice, does not show any. In any event, the delay between indictment and trial of some fourteen months is not, on the facts of this case, unreasonable.

5. Count IV of the indictment charged that petitioner violated 18 U.S.C. 2314 by inducing Williams to travel in interstate commerce from New York to California. Petitioner contends (Pet. 45–47) that because paragraph two of 18 U.S.C. 2314—on which Count IV is based—refers only to "interstate commerce," while the other paragraphs of that section refer to "interstate or foreign commerce," there is confusion as to the proper scope of paragraph two. It is undisputed that the New York-to-California trip

did in fact take place,[6] and this provides the interstate basis for petitioner's conviction on Count IV. There is no need to consider petitioner's question in these circumstances, merely because foreign travel also was involved.[7]

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.
WILL WILSON,
Assistant Attorney General.
BEATRICE ROSENBERG,
THOMAS M. LOCKNEY,
Attorneys.

June 1971

---

[6] Petitioner suggests (Pet. 46–47) that he was improperly convicted on Count IV because he was not involved in that transaction. But petitioner was involved at the beginning, and was seen by Williams when he met with Juan in San Diego to complete the deal (see p. 5, *supra*). From this the jury could properly infer that petitioner in fact remained a party to this transaction.

[7] Petitioner urges reversal on the ground that Williams stated in the presence of the jury that he had sought FBI protection from petitioner and his confederates (Pet. 25–26). Williams was allowed to stay in the courtroom for a few minutes after he testified because the FBI agent accompanying him had left and the prosecutor did not want him to leave alone (Tr. 619–620). However, the fact that Williams feared petitioner and his associates was brought out by petitioner's counsel on cross-examination (Tr. 596). In *Hall* v. *United States*, 419 F. 2d 582 (C.A. 5), on the other hand, the witness' fear of the defendant was asserted and repeatedly emphasized by the prosecution.

U.S. GOVERNMENT PRINTING OFFICE: 1971

PETITION FOR REHEARING

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
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IN THE SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1970

NO. 70-119

ROBERT LEE BLEVINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI

to the United States Court of Appeals

FOR THE NINTH CIRCUIT

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IN THE SUPREME COURT

of the

UNITED STATES

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NO. 70-119

ROBERT LEE BLEVINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING
OF ORDER DENYING CERTIORARI

to the United States Court of Appeals

FOR THE NINTH CIRCUIT

Petitioner respectfully moves this court for an order vacating its' order dated October 12, 1971 which denied certiorari, and that the court now grant certiorari.

The petition for certiorari previously filed herein presented the questions:

1. Important questions of Federal

conspiracy law referred to but not settled by Dutton v. Evans, 400 U. S. 74(1970) exist in this case and such issue is similar in nature to the one raised in Bostic v. United States, No. 5250, cert. granted, 39 L.W. 3297.

2. The co-conspirator exception to the hearsay rule should be declared by this court to be violative of amendment VI because it permits evidence to be introduced which is not subject to cross-examination and thus violative of due process under amendment V and thus involved an important question of Federal law which has not, but should be, settled by this court.

3. The Court of Appeals for the Ninth Circuit permitted an indictment to stand which charged in one count, multiple conspiracies composed of different groups of people which were concerned with different subject matter transactions which, if true, violated different statutes. This so far departed from the accepted and usual rules of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of this court's power of supervision.

4. The courts of appeals, not only in the ninth circuit in this case, but in all circuits in conspiracy cases have allowed the prosecution to develop a growing habit of using conspiracy indictments in lieu of a prosecution for the substantive offense itself or in addition to. Just as this court served notice on the policeman that he could not bottom his case on illegally obtained evidence or unlawfully extracted confessions, the prosecutor must be told that he cannot use the broad spectrum conspiracy indictment to bottom jurisdiction where it would otherwise not exist or to render obviously hearsay statements, otherwise inadmissible, permissible proof. These issues are on the appellate dockets in almost all, if not all, of

the circuits and should be disposed of.

5. The Court of Appeals for the Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings, or so sanctioned such a departure by the lower courts insofar as extra-territorial reach of Federal criminal law is concerned as to call for an exercise of this court's power of supervision.

6. In California, where a specific intent is an essential element of the crime and proof of such intent rests entirely upon or substantially upon circumstantial evidence, the trial court must, on its' own motion, give an instruction on circumstantial evidence. Not to do so is reversible error per se.

7. The decision of the court of appeals insofar as it refused to consider the question of petitioner's denial of his right to a speedy trial is in conflict with the decision of the Supreme Court of Alaska.

Those issues were fully explored in the Petition.

Since filing and denial of that Petition for Certiorari, petitioner has discovered that United States Courts lack subject matter jurisdiction by virtue of the Mexican Extradition Treaty of 1899; and circumstances and events which developed in the course of the jury trial in the Superior Court of California for San Diego County entitled Nacos v. Blevins, Civil Action Number 306322. A copy of the original complaint in that action was printed as Appendix III(e) of the Petition at page xv. Petitioner testified at this civil action but did not do so at his criminal trial. The civil action resulted in a judgment in petitioner's favor.

I

ARTICLE III OF THE EXTRADITION TREATY OF 1899 BETWEEN THE UNITED STATES AND MEXICO SPECIFICALLY DEPRIVES UNITED STATES COURTS OF JURISDICTION OF THIS CASE.

Article III of the Extradition Treaty of 1899 between the United States and Mexico contains this proviso:

> "Each contracting party agrees not to assume jurisdiction in the punishment of crimes committed exclusively within the territory of the other" 31 Stat. 1818; T5242; 1 Malloy 1193.

The Constitution of the United States, Article VI provides:

> "This constitution, and the laws of the United States which shall be made, under the authority of the United States, shall be the Supreme Law of the Land."

It is, therefore, quite clear that if the situs of crimes alleged to have been committed by petitioner was in Mexico, then United States Courts are deprived of subject matter jurisdiction by virtue of the Extradition Treaty of 1899 regardless of what the general rule of law may be otherwise.

While such conventional legal research as is available to petitioner has not been productive on the political and historical reasons for this proviso; an examination of the case of A. K. Cutting as reported in the July and

and August, 1886, New York Times and the Report on Extraterritorial Crime and the Cutting case, 1887, Foreign Relations of United States, 757, indicates that this proviso arose out of the Cutting affair.

The July 1-December 31, 1886, New York Times Index at page 150 reflects the dates, pages, and columns of the articles covering the Cutting case. The gist of these articles was that tempers flared so between the Texans and the Mexicans as a result of this case that war was not only considered but Mexico actually reinforced its border garrisons and conducted maneuvers at the Rio Grande River near El Paso.

John Bassett Moore, as a Department of State officer prepared the then famous Report on Extraterritorial Crime and the Cutting Case; 1887 Foreign Rel. of United States, 757, in which he exhaustingly examined the subject matter and concluded Mexico did not have subject matter jurisdiction in the Cutting case. In that case, an American citizen, Cutting, was prosecuted and convicted in a Mexican Court, of libel committed in the publication of a newspaper in El Paso, Texas. The United States Government protested, and the Mexican Government asserted the propriety of the proceedings under Article 186 of the Mexican Penal Code, which provided that "penal offenses committed in a foreign country by a Mexican against Mexicans or foreigners, or by a foreigner against Mexicans, may be punished in the Republic," if they have not been tried elsewhere and if the accused is in the Republic voluntarily or as a result of extradition. Here the victim of the alleged libel was a Mexican national, and the accused Cutting had resided in Mexico "off and on" for eighteen months. The charge against Cutting was later amended to include libel committed in Mexico through the circulation in Mexico of the newspaper con-

taining the defamatory statements. During the course of the international controversy, the appellate court in Mexico ordered Cutting's release, on the grounds that the aggrieved Mexican had withdrawn his complaint, and that the term already served was sufficient to satisfy justice.

In his Annual Message to Congress, December 6, 1886, President Cleveland said of this case:

> "A sovereign has jurisdiction of offenses which take effect within his territory, although concocted or commenced outside of it; but the right is denied of any foreign sovereign to punish a citizen of the United States for an offense consummated on our soil in violation of our laws, even though the offense be against a subject or citizen of such sovereign. The Mexican statute in question makes the claim broadly, and the principle, if conceded, would create a dual responsibility in the citizen, and lead to inextricable confusion, destructive of that certainty in the law which is essential of liberty...
>
> Whatever the degree to which extraterritorial criminal jurisdiction may have been formerly allowed by consent and reciprocal agreement among certain of the European states, no such doctrine or practice was ever known to the laws of this country or of that form which our institutions have mainly been derived."[18]

[18] 1886 Foreign Rel. of U. S. viii; 2 Moore, International Law 221-232.

Consequently, within the framework of the present factual stiutation, the jurisdiction of the United States Court must depend upon the consummation of the crime within the United States. The offense must "take effect" within the United States.

This rule of law seems to obtain in the Ninth Circuit. See United States v. Rodriquez, 182 F Supp. 479 (1960) Aff. Sub. Nom. Rocha v. United States, 288 F. 2d 545 (CA 9, 1961). Rodriquez stated:

> "When the effect is felt by private persons within the state, penal sanctions rest on the "objective" or "subjective" territorial principal used in the Strassheim case." See Strassheim v. Daily, 221 U.S. 280 at 285.

Here however, if a fraud was perpetrated, its effect was felt or consummated in Mexico. Therefore, American Courts lack jurisdiction.

The English cases of Regina v. Brixton Prisoner Governor, ex parte Rush 1 All Eng. Rep. 316 [1969] and Board of Trade v. Owen, 1 All Eng. Rep. 411 [1957] shed light on the issue because of their similar factual patters.

In each of those cases a conspiracy was alleged which had as its object a fraud to be consummated or perpetrated outside the territorial jurisdiction of the English Courts. However, some overt preparatory acts were done in England.

The House of Lords, relying in part upon Dealy v. United States, 152 U.S. 539 found that English Courts lacked subject matter jurisdiction.

Dealy ruled at 547:

"If the conspiracy was entered into

> within the limits of the United States and the jurisdiction of the Court, the crime was then complete, and the subsequent overt act in pursuance thereof may have been done anywhere."

Thus, the situs of the conspiratorial agreement test; in this case, Mexico, determines that jurisdiction does not exist in American Courts by virtue of the treaty proviso.

Therefore, viewed either from the point of view of where the conspiratorial agreement was entered into or from the point of view of where the effect was felt, the locus delicti is Mexico and by virtue of this Extradition Treaty of 1889, United States Courts have no jurisdiction.

Judge Cardozo, in People v. Werblow, 241 N. Y. 55, 148 N. E. 786 at 789 said:

> "We think a crime is not committed either wholly or partly in this state, unless the act within this state is so related to the crime that if nothing more had followed, it would amount to an attempt."

Mims v. United States, 375 F. 2d 135 (1967) at 148 said:

> "Much ink has been spilt in an attempt to arrive at a satisfactory standard for telling where preparation ends and attempt begins" and Mims reflects upon the paucity of Federal cases on the subject.

However, as n. 41 in Mims points out, Gregg v. United States, 113 F. 2d 687, 690

(CA 8, 1940) follows Cardozo's opinion in Werblow, op. cit.

> "The Gregg case, at p. 690 of 113 F. 2d that test laid down by Cardozo, Jr. in the Werblow case, supra, note 40, "***The act must 'carry the project forward within dangerous proximity to the criminal end to be attained'. ***"
>
> "The Coplon case, at p. 633 of 185 F. 2d, quoted with approval the following from the opinon of Holmes, J. in the Peaslee case, supra, note 40: " 'Preparation is not an attempt. But some preparations may amount to an attempt. It is a question of degree. If the preparation comes very near to the accomplishment of the act, the intent to complete it renders the crime so probable that the act will be a misdemeanor, although there is still a locus poenitentiae, in the need of a further exertion of the will to complete the crime.' "
>
> "In discussing the same question in the Kennedy case, supra, note 40, Holmes, J., said: "***Every question of proximity must be determined by its' own circumstances, and analogy is too imperfect to give much help. ***" "

Factually, it is clear that no acts rising to the dignity of an attempt took place within the United States and therefore the United States Courts lack subject matter jurisdiction by virtue of the proviso of Article III of the Extradition Treaty of 1899 between the United States

and Mexico.

II

THE RESULTS OF THE JURY TRIAL IN THE CIVIL ACTION INDICATE INEFFECTIVE ASSISTANCE OF COUNSEL.

On September 24, 1971, the jury in civil action 306322 returned its' verdict in favor of defendants Robert Blevins, et al. and against plaintiffs John C. Nacos and Shirley M. Nacos also known as Shirley M. Jahnson. Morris Jacobs, Dan Daniels and Etablissement Delami, a Liechtenstein Corporation had been non-suited at the close of the plaintiff's case.

In the civil action, the defendant testified. In the criminal action here on appeal, he did not testify. Petitioner wanted to testify but was not permitted to do so by his trial counsel.

Petitioner concedes that it is the rule rather than the exception that:

> "Tactical decisions will not be reviewed with the hindsight of an appellate court." See People v. Brooks, 64 Cal. 2d 130, 140; 48 Cal. Rptr. 879; 410 P. 2d 383; People v. Garrison, 246 Cal. App. 2d 343, 350-351; 54 Cal. Rptr. 731.

> "It is the rule and properly so that the defendant has the "burden or establishing his allegation, not as a matter of speculation, but as a demonstrable reality" People v. Reeves, 64 Cal. 2d 766, 774; 51 Cal. Rptr. 691, 415 P. 2d 35.

Applying careful scrutiny to this formidable obstacle we note:

First, "The fact of the matter is that a defendant who does not take the stand does not in reality enjoy any longer the presumption of innocence" Williams, The Trial of a Criminal Case, 29 NYS Bar Bull 36, 42 (1957) cited in Poe v. United States, 233 F. Supp. 173 at 177 (1964).

Second, "The importance the jury attaches to the accused's not taking the stand and denying his guilt cannot be over emphasized" Poe, Op. Cit. at 175.

Third, when the petitioner did take the stand and testify, the verdict was in his favor even though the same witnesses testified to essentially the same facts.

Consequently, it would seem that this presents the unusual case where the court does not have to speculate upon what might have been, but can properly distinquish the results obtained where the defendant did testify and where he did not.

Unlike United States v. Von Roeder and Gonzales, 435 F. 2d 1004 (1971) this petitioner did not discuss the right to testify or its' relative advisability on the record.

Petitioner contends important defense issues which could have been raised but were not, such as the fact he was in the hospital in San Diego undergoing surgery the time Hartley Bell claimed that he was in Tijuana, coupled with testimonial discrepancies in the civil trial lead irresistibly to the inescapable conclusion that he was ineffectively represented.

The disparity of result should be the "demonstrable reality" of Adams v. United States, exrel McCann, 317 U.S. 269, 281.

Therefore, crucial defenses, alibi due to hospitalization in one case, denial in others, were withdrawn from the case due to the failure of counsel to fully investigate all defenses of fact and law and thus petitioner did not receive

effective representation.

This should require reversal.

III

THE CONDUCT OF THE PROSECUTOR, IN INDICTING ALLEGED CO-DEFENDANTS WHO HE SHOULD HAVE KNOWN WERE NOT SUBJECT TO EXTRADITION NOR PROCESS TO APPEAR AT THE PETITIONER'S TRIAL BY REASON OF THE EXTRADITION TREATY OF 1899 DEPRIVED PETITIONER OF DUE PROCESS OF LAW WHERE IT APPEARS SUCH TACTIC WAS A DEVICE TO AVOID THE HEARSAY RULE BECAUSE IT EFFECTIVELY DEPRIVED PETITIONER OF HIS RIGHT TO CONFRONTATION.

A defendant in a criminal trial has the constitutional right to a prosecutor who acts within reasonable limits. Mooney v. Holohan, 294 U.S. 103; Alcorta v. Texas, 355 U.S. 28; Pyle v. Kansas, 317 U.S. 213.

The conduct of the prosecutor may deny the accused a fair trial and thus deny due process of law. See Berger v. United States, 295 U.S. 78.

In this case, the prosecutor well knew that neither Natividad nor Varela ever came within the territorial jurisdiction of the United States.

It is clear beyond peradventure that neither Natividad nor Varela would or could be compelled to attend the petitioner's trial.

But because they were co-defendants in this indictment, statements made by them came within the co-conspirator exception to the hearsay rule and were admitted, over objection against this petitioner.

This effectively denied petitioner's VI Amendment right to confrontation.

This prosecutorial tactic was fundamentally unfair and rendered the trial a sham because there was no way this petitioner could refute these alleged statements without taking the stand himself since all the percipient witnesses were out of the jurisdiction and not subject to process.

This forced petitioner to have to take the stand and thus give up his V Amendment right not to testify or obviously suffer conviction.

Thus petitioner could only refute the government's case by taking the stand--which his counsel declined to allow him to do.

Thus the jury trial aspects of the case was really reduced to a sham.

Once the motion for judgment of acquittal was denied it was legal suicide for this petitioner not to take the stand.

His counsel's not allowing him to do so denied petitioner of effective assistance of counsel.

Therefore, the prosecutorial tactics coupled with trial counsel's failure to recognize the necessity for the petitioner to take the stand reduced the trial to a farce and sham--insofar as its' presentation as a jury matter was concerned.

This case should be reversed.

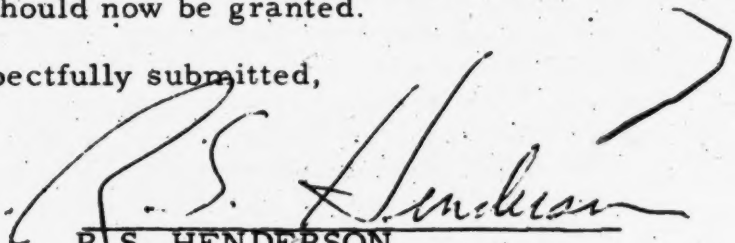
IV

CONCLUSION

For the reasons set forth in this petition for rehearing, as well as in the petition for

certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,



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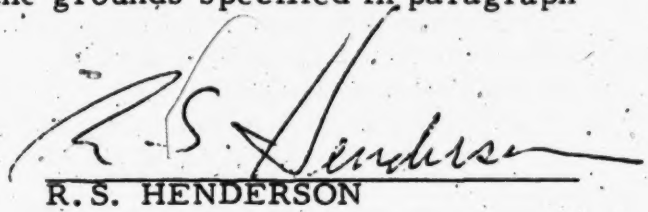
Attorney for Petitioner

CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in paragraph 2 of Rule 58.



R. S. HENDERSON
Attorney for Petitioner

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

Denise Wakeman, being first duly sworn, deposes and says:

That she is a citizen of the United States and that her business address is 1140 Union Street, Suite 204, San Diego, California 92101; that she is over the age of eighteen years, and not a party to the within action.

That on December 3, 1971 she deposited in the United States Mail, San Diego, California, in the within action NO. 70-119, ROBERT LEE BLEVINS v. UNITED STATES OF AMERICA, in an envelope bearing the requisite air mail postage, three copies of the PETITION FOR REHEARING OF ORDER DENYING CERTIORARI addressed to:

Erwin N. Griswold
Soliciter General
Beatrice Rosenberg
Thomas M. Lockney
Attorneys
Department of Justice
Wasington D. C. 20530

at which place there is a delivery service by United States mails from said post office.

Denise Wakeman
DENISE WAKEMAN

SUBSCRIBED AND SWORN to before me this 1st day of December, 1971.

R S Henderson
NOTARY PUBLIC in and for said county and state

OFFICIAL SEAL
RICHARD S. HENDERSON
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My Commission Expires Feb. 4, 1972

1140 Union Street, San Diego, Calif. 92101